

**DOCUMENTS NUMBERED 28326-31441**

Margaret Sims/EAC/GOV  
10/20/2004 09:39 AM

To Adam Ambrogi/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Troy Griffis/EAC/GOV@EAC, Paul  
Herr/EAC/GOV@EAC, Nancy Jackson/EAC/GOV@EAC,  
cc Carol A. Paquette/EAC/GOV@EAC, Diane  
Savoy/EAC/GOV@EAC, jthompson@eac.gov,  
bhancock@eac.gov

bcc

Subject Election Training-All Hands

Julie, Brian, and I have worked out the following training schedule. This training is important for all hands because questions will come in before and after election day, as well as on election day.

Except for Wednesday, October 27, all training sessions will be held in EAC's big meeting room from 11:30 AM - 12:30 PM. The time and location of the October 27 will be announced later, once we have figured out where we can hold it.

**Wednesday, October 20**

*Election Fraud, Voting Rights Issues, HAVA Administrative Complaint Procedures - Julie Thompson*

**Friday, October 22**

*NVRA Fail-safe Voting Provisions, Voter ID Requirements, Provisional Voting - Peggy Sims*

**Wednesday, October 27**

*Voter Assistance, Access for Disabled Voters, HAVA Voter Information Postings, Other Polling Place Issues (Campaigning, Exit Polling, Poll Hours, Time Off to Vote) - Peggy Sims*

**Friday, October 29**

*Reporting and Certifying Election Results, Contested Elections & Recounts, Electoral College - Brian Hancock*

Please feel free to bring your lunch and your questions.

028326

Karen Lynn-Dyson/EAC/GOV

02/18/2005 03:53 PM

To Sheila A. Banks/EAC/GOV@EAC, Holland M. Patterson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Spring A.

cc

bcc

Subject Fw: Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Hey-

Forgot to cc you all on this.

Thanks

K

Karen Lynn-Dyson  
Director, Help America Vote College Program  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 02/18/2005 03:50 PM -----

Karen Lynn-Dyson/EAC/GOV

02/17/2005 04:02 PM

To Gracia Hillman, Paul DeGregorio, DeForest Soaries, Ray Martinez

cc

Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC

Subject Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Commissioners-

As was discussed during our session on February 17, 2005, please *review and provide your approval, disapproval or amendments* to the following items by Friday, February, 25, 2005:

1. The attached Scope of Work which outlines the tasks related to contract work around projects relating to voluntary guidance on provisional voting and voter identification procedures.
2. The proposal will be advertised beginning **February 28, 2005.**
3. The deadline for submitting proposals will be **March 14, 2005.**
4. Proposal review will be completed by EAC staff by **March 17, 2005**
5. Staff will recommend a contractor to the Commissioners on **March 18, 2005.**
6. Commissioners will be asked for their decisions no later than **Tuesday, March 22, 2005**

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Statement of Work - Provisional Voting, Voter ID.doc

Thank you for your help and attention to this matter.

K  
Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028310

February 14, 2005

PROVIDING EAC ASSISTANCE IN DEVELOPING VOLUNTARY GUIDANCE ON PROVISIONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

0.0 Contract Title: Assistance to the U.S. Election Assistance Commission in the Development of Guidance on Provisional Voting and Voter Identification Procedures

1.0 Background: Sec. 302(a) of HAVA requires that all States allow the casting of provisional ballots in instances where a voter declares their eligibility to vote but their name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. This section describes several requirements for implementation of provisional voting, but the States have considerable latitude in specifying how to carry out these requirements. The EAC seeks to examine how provisional voting was implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 Federal elections.

HAVA Sec. 303(b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents will result.

2.0 Objective: The objective of this contract is for EAC to obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics for promulgation to the States in time for implementation for the 2006 Federal elections. The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

3.0 Scope: In general the Contractor shall be responsible for all research and analysis activities, including the conduct of public hearings for fact finding and public comment purposes. However, in light of the urgent need to get this work underway, the EAC has scheduled a public hearing on February 23, 2005, on the topic of provisional voting.

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An initial framework for provisional voting policy has been set by the court decisions rendered on the election procedures utilized in the 2004 election. The 6<sup>th</sup> Circuit decision, in particular, has drawn some boundaries which must be given due regard in the course of considering future policy alternatives for provisional voting.

Notice of public meetings and hearings is required to be published in the Federal Register. The Contractor shall be responsible for preparing the notice documents, and the EAC will submit the notices and cover the cost of publication. In addition, draft guidance documents must be published in the Federal Register to obtain public comment prior to their adoption. Again, the Contractor will work with the EAC to prepare the draft documents for publication, which the EAC will submit and cover the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

#### 4.0 Specific Tasks

For ease of reference, following task 4.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is understood that the work on these two topics will be conducted essentially concurrently, with Voter Identification activities starting approximately one month after Provisional Voting.

- 4.1 Prepare a project work plan. The Contractor shall prepare and deliver a brief Project Plan not later than 10 days after contract award. This plan shall describe how the Contractor will accomplish each of the project tasks, including a timeline indicating major milestones. A single document will be prepared to include both provisional voting and voter identification tasks. The Plan shall be presented at a project kickoff meeting with the EAC Project Manager.
- 4.2 Submit monthly progress reports. The Contractor shall submit a monthly progress report within 2 weeks of the end of each month. This report shall provide a brief summary of activities performed and indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect schedule should be identified for resolution. Budget status should also be provided.
- 4.3 Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager and the lead Commissioner for this work to discuss research findings and progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor Project Manager and the EAC Project Manager as the work progresses. The Contractor may also be required to periodically brief the full Commission on their work.

#### Provisional Voting

- 4.4 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of the disparities and similarities of how provisional

voting was implemented around the country will provide a baseline for the consideration of future approaches. Seventeen States never had provisional voting before HAVA was enacted, while many other States did. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

- 4.5 Recommend alternative approaches for future implementation of provisional voting. The Contractor shall conduct a literature review to identify other research results and data available on this topic. The EAC Election Day Survey, for example, contained several questions on provisional voting. The EAC will make these survey data available to the Contractor. Based on their analysis of available research and the results of Task 4.5, the Contractor shall diagnose the problems and challenges of provisional voting implementation and hypothesize alternative approaches.

The Contractor shall assess the efficacy of these alternatives in relation to the following inter-related policy objectives: (1) enabling the maximum number of eligible voters to cast ballots that will be counted; (2) providing procedural simplicity for voters, poll workers, and election officials; (3) minimizing opportunity for voter fraud; and (4) maintaining a reasonable workload for election officials and poll workers. Additional policy considerations may be identified in the course of this research effort. The Contractor shall document and brief these alternatives to the Commission.

- 4.6 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board of Advisors meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 4.7 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.
- 4.8 Arrange one public hearing for receiving public comment on draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the meeting
- 4.9 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

## Voter Identification Requirements

- 4.10 Collect and analyze State legislation, administrative procedures, and court cases. It is assumed that the collection of information for analysis of voter identification requirements will be performed concurrently with the research for Task 4.5. An understanding of the disparities and similarities of how voter identification requirements were implemented around the country will provide a baseline for the consideration of future approaches. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.
- 4.11 Convene a half day public hearing on the topic of voter identification requirements. The Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC. The Contractor shall identify three panels of three to four speakers each. The Contractor shall arrange for speaker attendance to include travel and per diem expenses. The EAC will provide publicity for the hearing. The Contractor shall prepare a document summarizing the proceedings and containing all testimony provided.
- 4.12 Recommend alternative approaches for future implementation of HAVA voter identification requirements. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on their analysis of available research and the results of Task 5.11, the Contractor shall diagnose the problems and challenges of voter identification and hypothesize alternative approaches. The Contractor shall coordinate with the EAC to identify appropriate policy objectives by which to assess these alternatives. The Contractor shall document and brief these alternatives to the Commission.
- 4.13 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 4.14 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.
- 4.15 Arrange one public hearing for receiving public comment on the draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the hearing.
- 4.16 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.



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Contract Type. The contract type will be Time and Materials with a ceiling of

6.0 Place of performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may be performed at the EAC offices.

7.0 Period of Performance. The period of performance is from date of award until October 28, 2005.

8.0 Schedule of Deliverables:

- Project plan – 10 days after contract award
- Progress reports – monthly
- Briefings – as required
- Analysis report on provisional voting - TBD
- Alternatives report on provisional voting – TBD
- Preliminary draft guidance on provisional voting - TBD
- Draft guidance on provisional voting for publication – 8/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on provisional voting for EAC adoption – 9/2005
- Analysis report on voter identification requirements – TBD
- Public hearing on voter identification requirements – TBD
- Summary of voter identification requirements hearing - TBD
- Alternatives report on voter identification requirements - TBD
- Preliminary draft guidance on voter identification requirements - TBD
- Draft guidance on voter identification requirements for publication – 9/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on voter identification requirements to EAC for adoption – 10/2005

REMAINING STANDARD CONTRACT TERMS TO BE PROVIDED.

028333

300820

Karen Lynn-Dyson/EAC/GOV

06/09/2005 03:10 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
bcc

Subject Revised Research update



Commissioners- Research plan June 9.doc

I understand that the Commissioners will consider this latest draft of the research plan at next Tuesday's meeting.

Enclosed please find the latest version in which approximately \$2.5 million in funds are appropriated. As always, this is a draft, working document from which to deliberate.

Regards-

K


Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

**EAC Research Plan Update - June 9, 2005**

<b>Project</b>	<b>Possible Contractor</b>	<b>Product/Outcome</b>	<b>Anticipated Start Date</b>	<b>Anticipated End Date</b>	<b>Projected Cost</b>
Election Day Survey	EDS/Communications Firm TBD	EAC survey report with national coverage/distribution	February	July	\$175,000
NVRA Survey	EDS/Communications Firm TBD	EAC survey report with national coverage/distribution	February	June	
UOCAVA Survey	EDS/Communications Firm TBD	EAC survey report with national coverage/distribution	February	July	
NVRA Registration Form	EAC/AIGA Consortium	Revised form and instructions	May	September	\$75,000
Absentee Ballot Postage	Competitive RFP	EAC survey and report to Congress	June	December	\$200,000
Statewide Voter Registration Technology Refresh	National Academy of Sciences	Information sharing/community of learning about VR databases	March	Through November 2006	\$50,000
Ballot Design	AIGA Consortium	Best practices on EAC website and presentations at national and regional meetings	July/August	January 1, 2006	\$200,000
Hispanic Working Group	EAC	EAC agenda for outreach to Hispanic voters	July	September	\$20,000
Provisional Voting / ID requirements	Eagleton Institute / Moritz College of Law	EAC voluntary guidance on provisional voting and voter ID	June	December	\$600,000
Improving Election Data	Social Science Research Council	Improved methods for collecting election data, common understanding of election terms and statistics	July/August	December	\$150,000
Voter Fraud and Intimidation	TBD (consultant)	EAC definitions for voter fraud and voter intimidation	June	November	\$40,000
Vote Count and Recount	Competitive RFP	Best Practices on vote counts and recounts	July	December	\$200,000
Poll Worker Training	The Poll Worker Institute	EAC poll worker training materials	July/August	Through November 2006	\$150,000
Voter Information and Education	American Political Science Assn/Council for Excellence in Government	Town hall mtgs/Improved systems for delivering information to voters	August	Through November 2006	\$250,000
Election Administration Law Website	Competitive RFP	Clearinghouse of election law info	August	Through November 2006	\$300,000
Electronic Voting	National Academy of Sciences	EAC survey and report to Congress	July	November	\$100,000
<b>Total Projected Costs</b>					<b>\$2,510,000</b>

028205

Karen Lynn-Dyson/EAC/GOV  
06/27/2005 05:45 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject RE: Peer Review Group 

Tom-

Had a very good review and discussion of the PRG at this morning's Commissioner meeting.

Also, the Commissioners have marked their calendars for a conference call with the Eagleton/Moritz team on July 12 at 9:30 AM.

Several concerns were raised about the composition of the PRG and, after some discussion, I indicated that Eagleton will provide the EAC with a revised participant list, and with a more detailed description of the PRG's mission, goals, objectives, workplan and timelines for accomplishing its work.

The Vice Chair is concerned that there is not sufficient conservative representation on the PRG. I would suggest the team do more research to identify well-recognized conservative academics to put on the Group.

Further, the Commissioners recommend a tiered process in which the PRG will prepare a "dispassionate" analysis of the issues and draw some tentative conclusions. This analysis and these conclusions will then be vetted with a defined/select group of local election officials, and then, with a defined/select group of advocacy organizations.

It was also suggested that a final round of focus group meetings be held with a cross-section of these election officials, advocates and academics for an overall interactive reaction to the analysis and recommendations.

Hope this helps clarify concerns; I look forward to sharing your revisions to the PRG with them.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
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"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
06/23/2005 02:43 PM

To klynndyson@eac.gov  
cc  
Subject RE: Peer Review Group

028336

Thanks, Karen.

Tom

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Thursday, June 23, 2005 2:24 PM

**To:** [REDACTED]

**Subject:** Re: Peer Review Group

Tom-

I will be back to you early next week with EAC's feedback on this.

Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

We will get you additional names and reactions by mid-week next week.

Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

[REDACTED]

06/22/2005 03:29 PM

To klynndyson@eac.gov  
cc  
Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG we submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and

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balanced.

Attached is a list of potential PRG members drawn from academia, the law, and non-profit organizations with interests in this area. Please look it over.

We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b) if so, who they should be. I'll keep you informed of our thinking as it develops.

Tom

Karen Lynn-Dyson/EAC/GOV

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

07/07/2005 01:24 PM

cc Thomas R. Wilkey/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
bcc

Subject Meetings next week

If available, Tom and the Commissioners will want to be in attendance at the conference call with Eagleton at 9:30 am on Tuesday.

If available, Tom, Brian and Carol Paquette will attend a Thursday July 14, 10:30 AM meeting with Kim Brace for an update on the UOCAVA Survey.

Thanks

Karen Lynn-Dyson  
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1225 New York Avenue , NW Suite 1100  
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028339

Karen Lynn-Dyson/EAC/GOV

07/15/2005 04:16 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC  
bcc

Subject Fw: Eagleton Institute June 2005 Progress Report

Should any of you all need or want a sense of what Eagleton has done on provisional voting and voter identification in preparation for the Cal Tech meeting, attached is their June monthly report.

K

Karen Lynn-Dyson  
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U.S. Election Assistance Commission  
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Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 07/15/2005 03:57 PM —



"Lauren Vincelli"  
<Vincelli@rutgers.edu>

07/14/2005 04:43 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc "Tom O'Neill" [REDACTED]  
john.weingart@rutgers.edu

Subject Eagleton Institute June 2005 Progress Report

Ms. Dyson,

Attached please find the June 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please direct them to Tom O'Neill at [REDACTED] or (908)794-1030.

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane  
New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237

028340



Fax: (732) 932-1551



ProgressReport\_JUNE2005\_EagletonInst.doc



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**EAGLETON INSTITUTE OF POLITICS**

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
JUNE 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

July 14, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

028342

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from the start of the project on May 26 through June 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The objective of the contract is to assist the EAC in the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements on which to base policy recommendations as guidance for the states in the conduct of the 2006 elections. The work has begun well, thanks to the clarity of the EAC's expectations and the strong collaboration by the scholars and staff at the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, and the Moritz College of Law at the Ohio State University.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or (908) 794-1030.

## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. The work plan provides for two months to complete Task 3.4. Work on this task is on schedule.

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

### LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team includes faculty, an executive administrator, a reference librarian, and several research assistants. It began immediately to compile statutes, case law and administrative procedures regarding Provisional Voting. The team has created a 50 state chart to summarize information on provisional voting. Categories for which state statutes and administrative procedures are being reviewed include:

- *When did the state create a system compliant with the HAVA provisional ballot requirements?*
- *Who may be eligible to cast a provisional ballot? and*
- *What is the process for discovering whether your provisional ballot was counted in the election?*

**Progress:** Initial research for 27 states, including the collection of provisional voting statutes is complete. This phase of the work is on schedule for completion by August 1. By the beginning of the week of July 11, Moritz's full time research assistant will move from voter identification research to gathering and organizing case law on provisional voting.

**Challenges:** Identifying the relevant statutes has been challenging; states use different terminology to codify provisional voting issues. Many states have scattered election law provisions throughout their codes. This variation from state to state makes creating a snapshot view across states a challenge. The team is meeting this challenge, and the work is on schedule.

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### PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team is constructing a narrative description for each state of the 50 states and the District of Columbia. It is also surveying a stratified random sample of county election officials to improve its understanding of actual practice in administering provisional voting.

**Description:** To construct the narratives, a researcher is examining newspaper accounts, state websites, and reports from third-party organizations to determine what information is publicly available about these issues during the 2004 election. To organize the information derived from this examination, we are creating an information system that will make it possible to catalog the basic information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combine it with Moritz's collection and analysis of statutes, regulations and litigation. The information system will make it possible to provide answers to such topics of particular interest listed in the contract as: "How did preparation for provisional voting vary between states that had some form of provisional voting and those that did not?" and "How did litigation affect implementation?"

**Progress:** The researcher in this area has identified sources of information for every state and the collection process is well underway. Verified database entries for 24 states are complete, as are two state narrative summaries. This phase of the research is on schedule for completion by the end of July.

**Challenges:** A key challenge is determining just what states actually did in practice to verify and count provisional ballots. A second challenge has been determining the variations in policy within individual states. We are still wrestling with resolving this challenge, but the work is on schedule.

**Work Plan:** By the end of the July, the compilation of statutes, administrative regulations, and litigation will be complete and ready to be combined with the state-by-state narrative compiled by Eagleton. That will form the basis for the analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

### SURVEY OF COUNTY ELECTION OFFICIALS

This survey will help the research team understand more about such key topics of interest as:

- "How did the experience of provisional voting vary between states that previously had some form of provisional voting and those where provisional voting was new in 2004?"
- "Did state and local processes provide for consistent counting of provisional ballots?"
- "Did local officials have a clear understanding of how to implement provisional voting?"

The survey results will supplement the information on these topics from the compilation of statutes, regulations and cases and from the narrative we are constructing for each state.

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**Description:** The Center for Public Interest Polling (CPIP) at Eagleton is conducting a national survey of county election officials to measure several aspects of provisional voting. The survey is designed to determine the following factors related to provisional voting at the county level:

- The content and quality of instructions provided to county officials by the states
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting

**Progress:** The survey instrument is complete. CPIP has compiled a list of election officials at the county level and at the municipal or regional level for states that do not assign the election responsibility to counties. It was forwarded to the call center, Schulman, Ronca & Bucuvalas Inc., (SRBI) the week of July 5, 2005. A sample will be drawn the week of July 12. Human Subjects Approval from Rutgers University was granted July 12. Pre-notification letters will be sent to election officials around July 12-13, 2005. The EAC has reviewed a draft of this letter, which we have now revised to make clear that the survey will increase our understanding of the provisional voting process, but is not being conducted on behalf of the EAC.

**Challenges:** We made special efforts to expedite Human Subject Approval to meet the schedule in the work plan. In the absence of an existing, reliable database of local election officials, we had to create one especially for this project. In order to provide a valid comparison between the states new to provisional voting with those that previously had some form of provisional ballot we doubled the sample size from 200 to 400. This increase will require an increase in the budget for the survey from \$15,000 to about \$24,000. We intend to reallocate costs within the existing budget to make this improvement possible, and will submit a letter describing the reallocation to the EAC in mid-July.

The sample has been, and will continue to represent the biggest challenge in this survey. Compiling the sample required substantial coordination and research to determine the accuracy of the identity and contact information for potential respondents. The difficulty in determining the appropriate contact is attributed to variation in county election officials' titles, jurisdiction types, and state and county election structures across the country. In addition to the potential pitfalls of reaching the appropriate county official, another factor in actually making contact with this special population will be dependent upon the hours that they keep, and may be hindered by the summer season.

**Work Plan:** This questionnaire will be pre-tested by July 15, and will field July 18 through August 5, 2005. This is somewhat later than projected in the revised work plan, but the information will arrive in time to be considered in drafting the analysis and alternatives document required under Task 3.5.

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## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have made substantial progress in the first two tasks, which constitute the information-gathering phase of the work on Voter ID. The research of Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** A team of Election Law@Moritz faculty, executive administrator, a reference librarian, and several research assistants is compiling statutes on Voter Identification, and providing a summarized analysis of this research.

**Progress:** The Moritz team has created a 50-state chart to record data on voter identification. Categories for which state statutes and administrative regulations are being reviewed include: “*Who is required to present ID*”, “*Types of ID required*”, and “*Consequences of having no ID*”. We have completed the initial research for 45 states and have collected the voter identification statutes for those states. An *Election Law@Moritz* Fellow is conducting an academic literature review on voter identification. This literature review will help shape the analytical framework that will guide us when the compendium of statutes and administrative regulations is complete.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Projections:** At the current rate, a draft of the voter identification chart should be complete on schedule, by the end of July. Work on the literature review will continue into August, but will be available to inform the analysis of alternative approaches for voter identification called for by Task 3.12 of the contract.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter in the states; and second, estimating the effect on turnout of voter id requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to

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monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. This work is on schedule to be completed by the end of July. The next key milestones will be the completion of the state database and drafting the first narratives.

### **VOTER ID AND TURNOUT ANALYSIS**

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. Analysis on the county-level will enable us to estimate the influence of ID requirements on various age groups, races, ethnicities and gender groups. We are compiling data from both the 2000 and 2004 Presidential elections to measure the effect that changes in ID requirements may have had on voter turnout through two national election cycles.

**Progress:** The structure of the database is complete. It contains demographic information from the Census, and turnout data from various sources. The researcher assigned to this task is devising the syntax that will be required to run the statistics when the dataset is complete. The methodology for this part of the study is complete, and the actual data collection will soon be finished.

**Projection:** We are waiting for the Census Bureau to release the 2004 County Demographic Estimates. We have ordered and await the arrival of 2 datasets that contain voter turnout and voter registration numbers on the county-level for both the 2000 and 2004 elections. Once these two sources of information are received, the researcher will insert this information into the existing database, clean up the dataset, and begin to run the statistics. By that point, the researcher will have separated the states into various ID-requirement groupings that have been determined by the team, which will require coordination with several other parts of the study. This work is on schedule. By the end of July, the researcher should have county-level and state-level statistics on the impact of each ID system upon turnout, analyzed through various demographic features on the county-level.

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### Task 3.11 Public meeting on Voter Identification Requirements

**Description:** We are working closely with EAC staff, particularly the General Counsel, to plan a half day public meeting on Voter ID requirements. Presentations at the meeting will form an important part of the information we are compiling about Voter ID requirements and the strengths and shortcomings of a range of alternative approaches.

**Progress:** We have recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we have recommended that one panel include legislators on opposite sides of the issue from two different states. Our research identified Mississippi and Wisconsin as two states to focus on, and we have recommended specific legislators from each. We have discussed with staff adding a researcher to the panel to put the debate in Wisconsin and Mississippi in either a national or historic context. We also recommended two researchers from contrasting points of view, to address the effects of Voter ID provisions under HAVA and broader provisions that are now the subject of national debate. EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA. We are awaiting a decision on our recommendations from EAC staff. We have no reason not to believe that the work is on schedule to be completed in time to organize a productive meeting on July 28.

**Challenges:** The date and location of this hearing has been changed twice since the beginning of the project. It was originally scheduled to take place in late June, but was rescheduled for July to allow the June hearing to focus on voting machine technology. The regular meeting was rescheduled for July 26 in Minneapolis, and was recently changed to July 28 in Pasadena. The changes in the scheduling of the July meeting have complicated our choice of panelists. More seriously, the changes mean that information from the hearing will not be available as early in the research process as contemplated in the contract. This timeframe will now require the team to summarize the hearing events at the same time that we are drafting the analysis and alternatives paper in early August.

Additionally, while our contract states that the "Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC," we have been asked only to make recommendations of topics and panelists, and the arrangements for the organization of the hearing are in other hands. This lack of clarity has caused some confusion and has delayed invitations to panelists. Thanks to frequent communication with members of the EAC, the process now seems to be working smoothly.

**Projection:** We believe the work is on schedule for completion in time to recruit the panelists for the July 28 hearing. Preparation of the hearing summary will likely be delayed because of the need to complete the analysis and alternatives paper.

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## PROJECT MANAGEMENT

Immediately after announcement of the award of the contract, Eagleton and Moritz began supplementing the core group that had prepared to proposal to building a highly qualified team to undertake the work. That team was in place by mid June, just a few weeks after the contract award.

As described in the proposal, the direction of the project is the responsibility of a five-person committee of faculty and staff from Eagleton and Moritz, chaired by Dr. Ruth Mandel, Director of the Eagleton Institute of Politics. Project Director Thomas O'Neill, a consultant to Eagleton, reports to this team and provides day-to-day guidance and coordination for the research. A weekly meeting of all the researchers engaged in the project is the primary means of coordinating the work. We have recently added an internal website to facilitate the review and revision of written materials.

### Task 3.1 Update the Work Plan

The first task was completed on time with the submission of a detailed work plan and timeline. EAC staff requested that the work plan be supplemented with a Gantt chart created on MS Project, and we submitted that a few days later.

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

**Progress:** Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded, as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations should be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We answered with an analysis of the cost and time involved adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. We have not received response on this correspondence from the EAC, and the recruitment of the group is on hold.

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**Challenges:** Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

**Projections:** We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

#### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

**Challenges:** There are no evident challenges to this task at this time.

**Projections:** By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

#### INTRANET

**Description:** A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

**Progress:** After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28<sup>th</sup> meeting to publish the Intranet through [www.intranets.com](http://www.intranets.com),

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one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

**Challenges:** There are no immediate challenges to completion of this task by the timeframe specified below.

**Projections:** Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.


#### FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV  
07/21/2005 01:35 PM

To "Job Serebrov"  
[REDACTED]>@GSAEXTERNAL  
cc Thomas R. Wilkey/EAC/GOV@EAC  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: project 

Job-

I write to see if you might be available to come to Washington on Monday, August 1 to meet with several EAC staff and Commissioners to discuss the voter fraud/voter intimidation project and your possible work as a consultant on the project.

I'd like to schedule this 1-2 hour meeting for sometime between 1 and 3 in the afternoon.

Might you be available to come to Washington for this ?

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028353

Juliet E.  
Thompson/EAC/GOV  
07/26/2005 07:58 AM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Thomas R.  
cc Sheila A. Banks/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogi, Jeannie Layson,  
Carol A. Paquette/EAC/GOV@EAC

bcc

Subject Agendas for meeting and hearing



final agenda - public hearing - july 28.doc July public meeting- final agenda.doc

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

023354



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**U.S. Election Assistance Commission**  
**Public Meeting Agenda**

Thursday, July 28, 2005

10:00 AM – 12:00 PM

**Call to Order** (Chair Hillman)

**Pledge of Allegiance** (Chair Hillman)

**Roll Call**

**Adoption of Agenda** (Chair Hillman)

**Correction & Approval of Minutes for June 30, 2005 Public Meeting**  
(Chair Hillman)

**Reports**

- Title II Requirements Payments Update (Vice Chairman Degregorio & Commissioner Martinez)
- Statewide Voter Registration List Guidance (Juliet Thompson)

**Presentations**

**Progress Report on Voter Identification Study**

- Tom O'Neill, Eagleton Institute, and Dan Tokaji, Moritz College of Law

**The Interaction of Voter Identification with HAVA**

- Brook Thompson, Coordinator of Elections (Tennessee) -- Interaction between voter ID and provisional voting (TN had voter ID prior to HAVA but no provisional voting prior to HAVA)

**Commissioners' Closing Remarks**

**Adjournment**



## U.S. Election Assistance Commission Public Hearing Agenda

Thursday, July 28, 2005  
1:00 P.M. – 5:00 P.M.

*Public Hearing on the EAC's Proposed Voluntary Voting System Guidelines*

**Call to Order** (Chair Hillman) (1:00)

**Pledge of Allegiance** (Chair Hillman) (1:01)

**Roll Call** (1:03)

**Adoption of Agenda** (Chair Hillman) (1:05)

**Presentations on Proposed Voluntary Voting System Guidelines**  
(1:07)

**Introduction of Proposed Voluntary Voting System Guidelines**  
(Carol Paquette) (1:10 - 1:20)

**Panel 1: State Election Officials** (1:20 – 2:30)

- Brad Clark, Assistant Secretary of State, Elections, CA
- Ann McGeehan, Director of Elections, TX
- Linda Lamone, President, National Association of State Election Directors

**Break** (2:30- 2:40)

**Panel 2: The Academic Community** (2:40 – 3:40)

- Thad Hall, Ph.D., Assistant Professor, Political Science, University of Utah
- Ted Selker, Ph.D., Associate Professor, Massachusetts Institute of Technology, Media and Arts Technology Laboratory
- David Dill, Professor of Computer Science, Stanford University

**Break** (3:40 - 3:50)





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**Panel 3: Use of Wireless Technology in Voting (3:50 – 4:20)**

- Stephen Berger, TEM Consulting & Chair of IEEE Standard Coordinating Committee 38

**Break (4:20 – 4:30)**

**Public Comment Period (4:30 – 5:00)**

This time period will be reserved for public participation. Pursuant to the public notice for this hearing, members of the public or organizations who have previously contacted the EAC will be given three minutes of hearing time for comment. All such groups and persons have pre-registered and been contacted regarding their participation. Comments will be strictly limited to three minutes to ensure the fullest participation possible.

**Commissioners' Closing Remarks**

**Adjournment**

Karen Lynn-Dyson/EAC/GOV

07/26/2005 01:30 PM

To Sheila A. Banks/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Conference call to "interview" potential voter  
fraud/intimidation consultants

Hi All-

Well, I have the unhappy task of trying to identify a date and time when we might schedule a series of conference calls with the consultants we've identified as possible candidates to work on the voter fraud/intimidation project.

Since August is impossible and horrible in terms of everyone being in the same place, I thought it might be easier to try and schedule three calls--one hour each in duration-- in which the Commissioners could talk to these candidates.

I'd like to "start the bidding" for the week of August 15.

Actually, I happen to know that all of the candidates could be available August 22 or 23 at some point in the day.

Let me know if your folks could be available by phone at any of these days and times.


Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

029358

Karen Lynn-Dyson/EAC/GOV  
07/26/2005 04:58 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC, Sheila A.  
bcc  
Subject Re: Conference call to "interview" potential voter  
fraud/intimidation consultants 

Mea culpa-

Well, you can take this off of your to-do list.

Tom Wilkey and I will be meeting with the consultant and doing the interviewing. We will keep the Commissioners apprised of our progress on this project.

Thanks all-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028359

Karen Lynn-Dyson/EAC/GOV  
08/01/2005 06:12 PM

To "Tom O'Neill" [REDACTED]>@GSAEXTERNAL  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC  
bcc  
Subject RE: Meeting with EAC [REDACTED]

Tom-

I will be in touch shortly with possible dates in very late August or early September, when EAC staff might be available to meet with Eagleton to discuss the project's research results and next steps.

In the meantime, I thought it was important to follow up on the issues Vice Chair DeGregorio raised while we were in Pasadena.

To be certain that I have the latest information, could you send to me the final list of the Eagleton/Moritz Peer Review Group and the list of organizations that Eagleton will be contacting for input?

Regards-

Karen

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028360

Karen Lynn-Dyson/EAC/GOV  
08/02/2005 05:00 PM

To "Tom O'Neill" [REDACTED]>@GSAEXTERNAL  
cc Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Thomas R.  
bcc  
Subject RE: Meeting with EAC [REDACTED]

All-

Could you let me know your availability to meet on September 5,6 or 7, say at 1:00 PM, with the Eagleton/Moritz team, to go over their research thus far, and next steps.

Thanks for your input.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]

07/29/2005 01:32 PM

To klyndyson@eac.gov  
cc  
Subject RE: Meeting with EAC

Karen,

Thanks for the email. No need to resend the original email from Washington. I received that shortly after you sent it. That email let us know that EAC would not need the research on ballot design that Tom Wilkey suggested we undertake and that you asked us to submit a proposal for. But the ballot-design issue was only one of the two topics raised by my email to you. The other question concerned a date to meet with EAC staff to discuss the forthcoming draft of our Analysis and Alternatives paper and an outline for the Preliminary Guidance Document. From our conversation yesterday, I understand that August 26, the date suggested, will not work because of the EAC's travel schedule. Please let me know if August 30, 31 or September 1 are possible for a meeting between the project team and EAC in Washington. The meeting would require perhaps 2 hours.

Tom O'Neill

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

023361

Karen Lynn-Dyson/EAC/GOV  
08/04/2005 05:26 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
bcc  
Subject RE: Meeting with EAC

Tom O'Neill-

I'd like to propose the Eagleton/Moritz meeting for September 6 at 1:00 PM at the EAC's offices.

If that date works, please be certain to reply to all on this e-mail, as I will be out of the office.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
08/02/2005 05:00 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject RE: Meeting with EAC

All-

Could you let me know your availability to meet on September 5,6 or 7, say at 1:00 PM, with the Eagleton/Moritz team, to go over their research thus far, and next steps.

Thanks for your input.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>

028362

Karen Lynn-Dyson/EAC/GOV

08/15/2005 04:43 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC  
cc Raymundo Martinez/EAC/GOV@EAC

bcc

Subject Fw: Eagleton Institute of Politics - July 2005 - Monthly  
Progress Report

FYI-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/14/2005 04:42 PM ---



"Lauren Vincelli"  
<Vincelli@rutgers.edu>

08/15/2005 03:01 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc "Tom O'Neill" [REDACTED]  
rmandel@rci.rutgers.edu, john.weingart@rutgers.edu

Subject Eagleton Institute of Politics - July 2005 - Monthly Progress  
Report

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at [REDACTED] or (908)794-1030.

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane

028363

New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237  
Fax: (732) 932-1551



ProgressReport\_JULY2005\_EagletonInst.pdf

028364





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**EAGLETON INSTITUTE OF POLITICS**

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
JULY 2005**

**For**  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

August 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

028365

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: tom\_oneill@verizon.net or (908) 794-1030.

## **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

### **LEGISLATION, REGULATIONS, AND LITIGATION**

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

**Progress:** The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

**Challenges:** The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

### **PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING**

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

## PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** The state-by-state database is complete, as is a first draft of all state narratives. This work has been shared with the larger team and is being reviewed currently in preparation for constructing analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

**Work Plan:** In the next month, revisions of the narratives will be complete. In addition to this research, we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms.

## SURVEY OF COUNTY ELECTION OFFICIALS

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting. The survey was designed to determine the following factors related to provisional voting at the county (or equivalent election jurisdiction) level:

- The content and quality of instructions provided to county officials by the states;
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting.

**Progress:** The fielding and initial analysis of the survey results are complete.

**Work Plan:** The information derived from the survey will be considered in drafting the analysis and alternatives document required under Task 3.5.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have completed tasks 3.10 and 3.11. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The chart created to collect data on voter identification is complete and is now being reviewed. Voter identification statutes are being collected.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** Review of the voter identification chart, the collection of the voter identification statutes, and the writing of the state by state summaries will be completed by the end of August.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of voter ID requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern

with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

### **VOTER ID AND TURNOUT ANALYSIS**

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. It also contains exit poll data from the 50 states, providing demographic data of voter turnout. The analysis of that data is well underway.

**Challenges:** The initial methodology that was devised to investigate the questions involved in this part of the study proved insufficient, as the necessary data was unobtainable (the Census Bureau has not yet released their 2004 data). After re-developing an appropriate methodology, the necessary data has been assembled, we have resumed the analysis of this data.

**Projection:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-August.

### **Task 3.11 Public meeting on Voter Identification Requirements**

**Description:** In early July, we continued our efforts to identify specific Voter ID topics or issues and panelists who could shed light on them. We recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we recommended that one panel include specific legislators on opposite sides of the issue from two different states, Mississippi and Wisconsin. We also discussed adding a researcher to the panel in order to place the debate in a national or historical context. We also recommended a panel of two academic researchers with contrasting points of view, to address the effects of Voter ID provisions under HAVA. In response to our suggestions, EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA.

By mid-July, the EAC had decided which topics and speakers should be invited, however most of those speakers proved unable to attend.

**Progress:** Tom O'Neill and Dan Tokaji attended the EAC Public Meeting held in Pasadena on July 28. Their presentations at the meeting described the progress of the research and our developing perspective on how to assess the quality of the provisional voting process in the states and identify possible steps for improvement.

**Challenges:** The changes in the scheduling of the July meeting delayed and ultimately made it impossible to assemble a panel, from which we could derive substantive insight into voter identification issues as they are playing out in the states. Additionally, due to the date of the hearing, the information from the hearing was not available as early in the research process as contemplated in the contract.

**Projection:** Preparation of the hearing summary will likely be delayed, due to the team's focus on preparation of the analysis and alternatives paper.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

**Progress:** Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded that as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations might be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to the EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We provided an analysis of the cost and time involved in adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. In the end, the EAC determined that Eagleton should appoint a balanced Peer Review Group of its own choosing. Initial phone calls were made to all members of that group by the end of July, and written invitations and descriptions of the process have gone to all possible members who had indicated their interest in serving.

**Challenges:** Communications on this issue with the EAC were not clear or timely. The purpose of the PRG is to review our work, and to comment on our research design, which is well underway. We had planned to have the PRG in place early enough in the project to enable them to provide feedback, including the research design. While we are

confident in the quality of our work, the experience and perspective of the Peer Review Group will strengthen our analysis and recommendations as we find a way to receive its critique in the more limited time now available. The delay in creating the Peer Review Group will result in a delay in the completion of the final draft of the analysis and alternatives paper and in the preliminary guidance document.

**Projections:** The work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** The Moritz team has provided Eagleton staff with all completed work. An Eagleton staff member reviews the content and formats of data from all supporting research and will (re-)format once the work has been completed for the compendium and reports submitted to the EAC. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

**Projections:** By the end of July 2005, much of the above referenced research has been completed. The entire project team has begun the process of reviewing all work, and will combine and format all documents and materials in preparation for our final reporting to the EAC.

### INTRANET

**Description:** All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

**Progress:** Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.



## FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV

08/16/2005 01:39 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Juliet E. Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Fw: Sept 6th EAC meeting.

Commissioners-

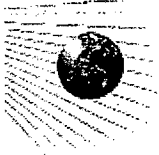
As mentioned in this morning's meeting, Eagleton/Moritz project staff are scheduled to come to Washington in early September to brief EAC staff on the project's progress to date.

Let me know if you would like to attend or if you will send someone in your place.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/15/2005 01:34 PM —



Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV

08/16/2005 11:51 AM

To tom\_oneill@verizon.net

cc Karen Lynn-Dyson/EAC/GOV@EAC

Subject Sept 6th EAC meeting

Mr. O'Neill,


Just a quick note to remind you that your meeting with EAC is confirmed for September 6 at 1 p.m. in Washington. The purpose of this meeting will be to review the draft of your analysis and alternatives paper with EAC and discuss the outline and direction of the Preliminary Guidance Document.

Regards,

Nicole K. Mortellito  
Assistant to the Executive Director - Thomas R. Wilkey  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.3114 phone  
202.566.3127 fax

028374

Karen Lynn-Dyson/EAC/GOV  
08/19/2005 03:41 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: Peer Review Group 

Tom-

Thank you for sharing this list of your Peer Review Group members, to-date. I will share this list with the Commissioners and will be certain to let your know of their feedback, if any.

I will also be back in touch regarding Eagleton's research around voter fraud and the research project EAC will be undertaking, this fall, around voting fraud and voter intimidation. The EAC is presently in the process of finalizing a work and staff plan for this project and once it is completed, I will be certain to brief you on it.

In the meantime, EAC staff and several of the Commissioners looks forward to meeting with the Eagleton/Moritz team on September 6 at 1:30 PM.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
08/19/2005 02:20 PM

To klyndyson@eac.gov  
cc  
Subject Peer Review Group

Karen,

Attached is a report on the status of recruitment of members of the Peer Review Group. We extended 9 invitations. We have four confirmed members, one reluctant turn-down, one who has yet to respond to an initial inquiry, and are awaiting confirmation from 3 others who initially agreed. Please let me know if you need additional information.

Tom O'Neill



RecruitmentStatus.doc

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**STATUS OF PEER REVIEW GROUP RECRUITMENT**

(As of August 17, 2005)

<b>R. Michael Alvarez, Ph.D.</b> Professor of Political Science California Institute of Technology	<b>YES/CONFIRMED</b>
<b>Guy-Uriel Charles</b> Associate Professor, School of Law University of Minnesota 612-626-9154	<b>YES</b>
<b>Brad Clark</b> Professor of Law George Washington University School of Law	<b>NO</b>
<b>Pamela Susan Karlan</b> Montgomery Professor of Public Interest Law Stanford Law School 650-725-4851	<b>YES</b>
<b>Martha E. Kropf, Ph.D.</b> Assistant Professor of Political Science University of Missouri-Kansas City 816-235-5948; KropfM@umkc.edu	<b>YES/CONFIRMED</b>
<b>Daniel H. Lowenstein</b> Professor of Law UCLA 310-825-4841	<b>YES</b>
<b>John F. Manning</b> Professor Harvard Law School	<b>NO RESPONSE</b>
<b>Tim Storey</b> Program Principal Legislative Management Program National Conference of State Legislatures	<b>YES/CONFIRMED</b>
<b>Peter G. Verniero, Esq.</b> Counsel Sills, Cummis, Epstein and Gross, PC (Former NJ Attorney General and Supreme Court Justice)	<b>YES/CONFIRMED</b>

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Attorney-Client  
Privilege  
028376



"Torra, Michael"  
<Michael.Torra@mail.house.gov>

09/02/2005 04:02 PM

To "aambrogi@eac.gov" <aambrogi@eac.gov>

cc

bcc

Subject Re: Fw: AZ DOJ response

I'm actually out of the office today, so let's talk more when I get back, but in answer to one of your questions -- yes, the CHC has spoken out against ID requirements in the past, especially during the HAVA debate.

Michael Torra  
Office of Congressman Charles A. Gonzalez

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

From: aambrogi@eac.gov <aambrogi@eac.gov>  
To: Torra, Michael <Michael.Torra@mail.house.gov>  
Sent: Fri Sep 02 15:50:41 2005  
Subject: Re: Fw: AZ DOJ response

Thanks-- we had, and it's good coverage. The AP had a piece as well-- this can be seen as a victory. Has the CHC come out officially on these ID issues? It is my opinion that the movements are being made in state legs. that will apply AZ type laws elsewhere. We obviously have good communications with House Admin and Senate Rules, as well as Whip Hoyer's office, but increased communications with Hill member offices would be helpful, if you have any suggestions.

AP Article:

Feds revise stance on Arizona voter ID requirement

Wednesday, August 31, 2005 7:43 PM PDT

PHOENIX (AP) - Arizona voters may be able to obtain at least a provisional ballot at polling places even if they don't show required identification despite the ID requirement in a ballot measure approved by voters last year. Whether that provisional ballot gets counted is another question.

The U.S. Justice Department in January signed off on election-law changes made by Proposition 200 itself. And a top department official in April signaled that the state would not run afoul of federal law if it put into place procedures to implement the ballot measure's voter ID mandate.

However, a different department official on Thursday wrote the state, saying it was "necessary to clarify our earlier interpretation in order to ensure an accurate representation of the Justice Department's views."

Acting Assistant Attorney General Bradley J. Schlozman's letter to a state official said the federal Help America Vote Act of 2002 requires that a person claiming to be an eligible voter and willing to sign a statement to that effect be given at least a provisional ballot.

However, HAVA leaves it up to states to decide whether a person who casts a provisional ballot is actually eligible to vote and therefore whether a provisional ballot should be counted, Schlozman wrote. Therefore, the state is free to

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prohibit the counting of a provisional unless the voter produces proper identification on or after election day, Schlozman added.

Schlozman ended his letter by apologizing "for any confusion generated by our earlier response."

The revised federal position runs counter to polling-place rules which Republican Secretary of State Jan Brewer and other top state officials adopted after months of legal and political wrangling among themselves and with lawmakers after Democratic Gov. Janet Napolitano vetoed two voter-ID bills passed by the Republican-led Legislature.

Reacting to Schlozman's letter, Brewer said she's willing to revise the election rules, now waiting for Justice Department clearance under the Voting Rights Act, to let voters get a provisional ballot even without ID at the polls but not to count that ballot counted unless the voter later shows ID to election officials within a certain number of days.

"If they don't, it doesn't get counted. It's on their back," Brewer said.

In vetoing the bills, Napolitano had argued that HAVA entitled voters to cast provisional ballots and a top gubernatorial adviser said Thursday that the revised Justice Department position supports the governor's view.

"I think they've seen the light," said Napolitano general counsel Tim Nelson.

---

Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Torra, Michael" <Michael.Torra@mail.house.gov>

09/02/2005 02:16 PM To  
"aambrogi@eac.gov" <aambrogi@eac.gov>

cc

Subject

023378

Fw: AZ DOJ response

You may have seen this already...

Michael Torra  
Office of Congressman Charles A. Gonzalez

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

From: Montano, Gloria <Gloria.Montano@mail.house.gov>  
To: Torra, Michael <Michael.Torra@mail.house.gov>  
Sent: Fri Sep 02 14:15:31 2005  
Subject: AZ DOJ response

<<image001.gif>> FYI

The Arizona Republic

Federal official upends Prop. 200 voter ID rule

Robbie Sherwood  
The Arizona Republic  
Sept. 2, 2005 12:00 AM

Arizonans who show up to the polls without identification must be given a provisional ballot, a top federal Justice Department official warned Thursday.

That opinion dealt a blow to Arizona's requirement that voters must show identification in order to cast a ballot at the polls, and throws into question rules approved under Proposition 200 to combat voter fraud.

Acting Assistant Attorney General Bradley Schlozman wrote to Secretary of State Jan Brewer Thursday and told her that a voter who shows up to the polls without identification must be given a provisional ballot.

That legal opinion contradicts a key portion of Brewer's much-delayed plan to carry out Proposition 200's voter-identification requirement, which was sent to the Justice Department for approval in early August. That plan, which Attorney General Terry Goddard and Gov. Janet Napolitano also signed off on, said any voter unable to produce proper identification would be turned away and not be allowed to cast a provisional ballot.

Provisional, or contested, ballots are put into sealed envelopes and verified later. They are counted only if the signature on the ballot envelope matches the signature on a person's voter registration.

While the letter said voters must be given provisional ballots whether or not they have identification, it added that state officials can still decide whether to count the ballots. It did not say that state election officials had to count the ballots.

Brewer said she had not seen the letter, but said she would comply with the department's interpretation of the law.

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Brewer did not believe the letter meant that the Justice Department would reject Arizona's voter-identification plan. The plan is still under review for compliance with the Voting Rights Act and election officials hope to have the new rules in place before local elections in November.

"My gut instinct is, if that's what DOJ says, then we will give provisional ballots," Brewer said. "But we will also (give voters) three or five days to return to the county elections director with ID before we count those votes. The people said they wanted ID at the polls with Prop. 200. So those votes won't be counted until they bring back their identification. Simple."

Not so simple, said Pima County Recorder F. Ann Rodriguez, one of Brewer's most powerful critics on the voter-identification issue.

Rodriguez said it would be impractical to require voters to travel to county election offices to prove their identity, as well as a logistical nightmare. Maricopa County had over 65,000 provisional ballots in the 2004 election, and Pima County had over 60,000. Rodriguez said election officials already have a method to verify provisional ballots by matching the signature on the ballot envelope with the voter's signature on their registration form.

"Considering gas is now \$3 a gallon, and how far somebody might live from the elections office, are voters really going to do that?" Rodriguez said. "That sounds like a quick response off the top of (Brewer's) head without really thinking it through."

So there could be more battles ahead.

Thursday's letter also contradicted - or "clarified" - a letter sent in April from a different Justice Department official to Brewer. She and other Proposition 200 supporters had used the letter to justify a hard-line stance against providing provisional ballots to voters without identification. Brewer had also used the April letter to chastise Napolitano for vetoing a bill that would have prevented people from casting a provisional ballot at polling places if they didn't have identification.

The letter Brewer received in April raised some eyebrows at the time. It had come from a politically appointed Justice Department official, Sheldon Bradshaw. He had resigned and started a new job as chief counsel for the Food and Drug Administration two weeks before he wrote to Brewer.

Schlozman didn't say why he disagreed with Bradshaw's earlier letter but wrote "we feel it necessary to clarify our earlier interpretation in order to ensure an accurate representation of the Justice Department's views."

Thursday's letter reversed Bradshaw's position and left Napolitano's chief legal adviser feeling vindicated.

"We've said all along that federal law requires provisional ballots and the statute was crystal clear on that," said Tim Nelson, Napolitano's general counsel. "This certainly calls into question whether the DOJ is going to pre-approve the secretary of state's voter manual."

Nelson said Napolitano disagreed with Brewer over denying provisional ballots to those who lacked identification, but backed off because it appeared the idea had the backing of the Justice Department, and Attorney General Goddard had agreed as well.

Goddard said Thursday he was still evaluating the department's letter but said, "It appears to be a major change in position about identification on provisional ballots, and is pretty much in line with the governor's position."

Gloria Montaño

028380



Deputy Chief of Staff

Congressman Raúl M. Grijalva

Arizona District 7

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(202) 225-2435 (202) 225-1541(fax)

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[www.house.gov/grijalva](http://www.house.gov/grijalva)

028381

Karen Lynn-Dyson/EAC/GOV

09/19/2005 01:05 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. cc Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC bcc

Subject Fw: August Progress Report - Eagleton Institute of Politics

Commissioners-

FYI-

Eagleton's August progress report.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/18/2005 01:02 PM —



"Lauren Vincelli"  
<Vincelli@rutgers.edu>

09/15/2005 12:04 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc tom\_oneill@verizon.net, jdobrich@eden.rutgers.edu

Subject August Progress Report - Eagleton Institute of Politics

Hi Karen,

Attached is the August progress report in fulfillment of our Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures. Please note, as per your instructions earlier this month, that the financial report will be sent via Fedex under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC. Also attached to the progress report is a finalized list of our Peer Review Group members. If you have any questions regarding this report, please contact Tom O'Neill at (908) 794-1030 or [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net).

Have a great day,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane  
New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237  
Fax: (732) 932-1551

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Progress Report\_AUGUST2005\_EagletonInst.pdf

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**EAGLETON INSTITUTE OF POLITICS**

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
AUGUST 2005**

**For**  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

September 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

**028394**

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from August 1 through August 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

Research on Provisional Voting and a draft of reports on the analysis and alternatives were substantially completed in preparation for the September 6 briefing for the EAC. Important reports such as the National Survey of Local Election Officials' Experience with Provisional Voting; Statistical Review Provisional Voting in the 2004 Election; State-by-state Narrative of Developments in Provisional Voting; and the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states, were all completed in August.

We made further progress on recruiting a balanced and authoritative Peer Review Group (which, as this report is written, is receiving all the documents listed above for review). Ingrid Reed of Eagleton will coordinate the work of the Peer Review Group. A list of the members of the Peer Review Group is attached.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to Tom O'Neill at: tom\_oneill@verizon.net or (908) 794-1030.

## **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, and Task 3.5 is well underway.

**Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of provisional voting and develop alternative means to achieve the goals of provisional voting.**

## **LEGISLATION, REGULATIONS, AND LITIGATION**

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and is near completion with this research.

**Progress:** We completed the state by state summaries of provisional voting in August. Also complete is a memorandum outlining provisional voting legislative changes since the 2004 election. This material was sent to the EAC as part of the package for briefing on September 6.

**Challenges:** The variety in the form and frequency of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The analysis of all the information, data, and survey results concerning provisional voting data will be completed in September, on schedule. The alternatives document should also be complete in September, pending response from the EAC on which direction those alternatives should follow.

## **PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING**

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. The report findings from the survey of 400 local election officials is now complete. The survey results improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

## PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** A state-by-state narrative of developments in Provisional Voting is complete and has been distributed to the EAC and the Peer Review Group. This work has been crucial to the process of constructing our draft analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

**Challenges:** The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent multiple revisions in order to incorporate the most up-to-date material available. Had the Election Day Study been available, this task would probably have been simplified considerably.

**Work Plan:** We completed revisions of the narratives.

## SURVEY OF COUNTY ELECTION OFFICIALS

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting.

**Progress:** The analysis of the survey results and findings report are complete.

**Work Plan:** We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting, and is becoming the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** We are refining the 50 state (plus District of Columbia) chart of data on voter identification. So far collected are voter identification statutes for 35 states. Summaries of the existing voter identification statutes have been written for forty states.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The state by state voter identification statute summaries will be completed for the remaining ten states and D.C. and the review of the chart will be completed. Analysis of voter identification data will begin.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern, and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with



increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

#### **VOTER ID AND TURNOUT ANALYSIS**

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout. The analysis of that data is underway.

**Challenges:** The main challenges to this task include gathering the complete set of changes to Voter ID laws over the past 5 years, and then incorporating those changes into a sound statistical methodology.

**Projection:** We will continue to work towards resolving the methodology issue, and ultimately produce a final report on this subject. The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-September.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The Peer Review Group will review our research and methodology and provide valuable feedback and suggestions for the direction of our work.

**Progress:** The composition of the Peer Review Group has been determined and the membership has been submitted to the EAC. Additionally, as of the date of this report all PRG members have received their first mailing, which included several reports from our research, and a draft of our analysis and alternatives outline for their review.

**Challenges:** Our timeline for circulating and discussing our research with the PRG has been compromised due to delays in completing the recruitment of members of the group.

**Projections:** We are in the process of scheduling our first conference call with PRG members for the week of Sept. 19, 2005.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. As we near the end of the Provisional Voting research and move into the Voter Identification research, we will re-evaluate the volume of files contained in the Information System and update the system.

**Projections:** The entire project team continues to review all project drafts, and will staff members combine and format all documents and materials in preparation for our final reporting to the EAC.

### **INTRANET**

**Description:** All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

**Progress:** Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

## FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project August 1- August 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC.

**ATTACHMENT:  
PEER REVIEW GROUP  
FINAL LIST (09/13/05)**

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Tel: (626)395-4422

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**Tim Storey**  
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National Conference on State Legislatures  
7700 East 1<sup>st</sup> Place  
Denver, CO 80230  
Tel: (303) 364-7700 or  
Tel: (202) 624-5400

**Peter G. Verniero**  
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One Riverfront Plaza  
Newark, NJ 07102  
[pverniero@sillscummins.com](mailto:pverniero@sillscummins.com)  
Tel: (973) 643-7000

Karen Lynn-Dyson/EAC/GOV  
09/27/2005 03:40 PM

To Vincelli@rutgers.edu, Juliet E. Thompson/EAC/GOV@EAC,  
Adam Ambrogi/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Thomas R.  
cc arapp@rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, foley.33@osu.edu,  
ireed@rutgers.edu, iwreed@aol.com,  
bcc

Subject Re: EAC Conference Call - Friday 9/30 

Eagleton/Moritz team-

I'd leek to propose a conference call with EAC Commissioner Martinez, General Counsel ,Julie Thompson, Research Manager Karen Lynn-Dyson and your team for either 10:30 or 1:30 on Friday, September 30.

This will be to discuss the draft guidance and final report you will be producing for the EAC.

Please let me know which time works for you

Regards  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028393



"John Weingart"  
<john.weingart@rutgers.edu>

09/27/2005 03:56 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc Vincelli@rutgers.edu, jthompson@eac.gov,  
aambrogi@eac.gov, rmartinez@eac.gov, twilkey@eac.gov,  
arapp@rutgers.edu, davander@eden.rutgers.edu,

bcc

Subject Re: EAC Conference Call - Friday 9/30

Karen - Let's do it on Friday at 1:30. From my initial polling, at least Tom O'Neill, Ingrid Reed and I will be available. Since we will not all be at the same location, would you like us to initiate a conference call from here and give you a number to call in to?

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>  
> Eagleton/Moritz team-  
>  
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> Regards  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

028394

Karen Lynn-Dyson/EAC/GOV  
09/27/2005 04:49 PM

To john.weingart@rutgers.edu

cc aambrogi@eac.gov, arapp@rutgers.edu,  
davander@eden.rutgers.edu, dlinky@rci.rutgers.edu,  
foley.33@osu.edu, ireed@rutgers.edu, iwreed@aol.com,  
bcc

Subject Re: EAC Conference Call - Friday 9/30

Excellent-

Friday at 1:30 it is.

Please do let the EAC staff know what number to call. Ray Martinez and Tom Wilkey may be calling from the road. Julie Thompson and I will be here.

Thanks, again

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"John Weingart"  
<john.weingart@rutgers.edu  
>

09/27/2005 03:56 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov, rmartinez@eac.gov,  
twilkey@eac.gov, arapp@rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu,  
foley.33@osu.edu, ireed@rutgers.edu, iwreed@aol.com, joharris@eden.rutgers.edu,  
lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu, tokaji.1@osu.edu,

"Tom O'Neill" <tom\_oneill@verizon.net>, vincelli@rci.rutgers.edu, williams.285@osu.edu

Subje Re: EAC Conference Call - Friday 9/30  
ct

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-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

028395

klynndyson@eac.gov wrote:

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> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

028396



Karen Lynn-Dyson/EAC/GOV

To Raymundo Martinez/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC

09/28/2005 01:28 PM

cc Adam Ambrogi/EAC/GOV@EAC

bcc

Subject Getting together today or tomorrow at 4:00

I've had a chance to go over, more thoroughly, the Eagleton study and findings and think it would be helpful for you all to take a special look at the research that was done related to provisional case law.

Shall we get together for about an hour or so today or tomorrow, so that you all can look through this material? This would be in preparation for Friday's call with Eagleton.

Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028397

Karen Lynn-Dyson/EAC/GOV  
09/28/2005 04:11 PM

To john.weingart@rutgers.edu, Raymundo  
Martinez/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Adam  
cc  
bcc

Subject Re: EAC Conference Call - Friday 9/30

Thanks for passing on the call-in information. We look forward to speaking with the team then.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>



"John Weingart"  
<john.weingart@rutgers.edu>

09/28/2005 04:01 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc

Subject Re: EAC Conference Call - Friday 9/30

Karen - For our conference call this Friday at 1:30, participants should dial (877) 805-0964 and then when prompted enter: 869580#. Could you relay this information to Commissioner Martinez and the others from the EAC who will be on the call. At our end will be Tom O'Neill, Ingrid Reed and me.

Thanks, John

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

klynndyson@eac.gov wrote:

>  
> Excellent-  
>  
> Friday at 1:30 it is.  
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> Thanks, again

028398

>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123  
>  
>  
>  
> \*"John Weingart" <john.weingart@rutgers.edu>\*>  
> 09/27/2005 03:56 PM  
> Please respond to  
> john.weingart@rutgers.edu  
>  
>  
>  
> To  
> klynndyson@eac.gov  
> CC  
> Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov,  
> rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu,  
> davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu,  
> ireed@rutgers.edu, iwreed@aol.com, joharris@eden.rutgers.edu,  
> lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu,  
> tokaji.1@osu.edu, "'Tom O'Neill'" <tom\_oneill@verizon.net>,  
> vincelli@rci.rutgers.edu, williams.285@osu.edu  
> Subject  
> Re: EAC Conference Call - Friday 9/30  
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>  
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> > Karen Lynn-Dyson  
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> > U.S. Election Assistance Commission  
> > 1225 New York Avenue , NW Suite 1100  
> > Washington, DC 20005  
> > tel:202-566-3123  
>  
>  
>

028400



"Tova Wang"  
<wang@tcf.org>  
10/06/2005 11:39 AM

To aambrogi@eac.gov  
cc  
bcc  
Subject October 28 meeting

History

 This message has been replied to

Hi Adam,

It was great meeting you at the UDC Law Symposium last week. I wanted to let you know that we are having a meeting about the voter fraud and intimidation meeting at 10 AM on October 28 at the EAC, and it would be great if you and Commissioner Martinez could be there. Let me know, and let's stay in touch. Thanks so much.

Tova

**Tova Andrea Wang**  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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[Click here](#) to receive our weekly e-mail updates.

028401



"Tova Wang"  
<wang@tcf.org>  
10/06/2005 12:04 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: October 28 meeting

History

This message has been replied to

Adam,

Just to make sure we're talking about the same thing, I'm actually not going to be at the "kick-off" on the 14th. This is a meeting just about our project on the 28th. The project is already underway and the contracts finalized.

Since the meeting I refer to on the 28th is from 10-12, is there any possibility of the three of us having lunch after that?

Tova

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

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Thursday, October 06, 2005 11:01 AM  
**To:** wang@tcf.org  
**Subject:** Re: October 28 meeting

Tova:

I was about to email you as well. It was certainly good to meet you last week, as I've heard about your work through numerous sources, and am glad we have finally been able to chat. As with many things (we started to discuss), the EAC is doing a lot of these projects for the first time. And unlike a thinktank, or nonprofit, we are constrained in a number of ways, and there are "sensitivities" that exist. Of course, there are benefits to not being a nonprofit, as well.

I'll state that at least myself, but hopefully Cmsr. Martinez will be at the kickoff meeting. You may do this already, but I would attempt to lay out the ideal structure for your involvement in the contract, and perhaps communicate this to Karen and the other contractor immediately before the meeting. That will frame this contract structure (beyond the terms of the agreement) to your liking.

Obviously a suggestion. However, I think that the goal is good, efficient research that is unimpeachable in partisan or methodological grounds--that will then be submitted to the Commission for its approval (and actually getting its approval).

Feel free to call me anytime. If you're in DC before then, and have some time, let's get Cmsr Martinez, you and I together for lunch or coffee.

Best,  
Adam

-----  
Adam D. Ambrogi

028402

Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Tova Wang" <wang@tcf.org>

10/06/2005 11:39 AM

To aambrogi@eac.gov  
cc  
Subject October 28 meeting

Hi Adam,

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Tova

Tova Andrea Wang  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

---

[Click here](#) to receive our weekly e-mail updates.

028403

Karen Lynn-Dyson/EAC/GOV

To Adam Ambrogi/EAC/GOV@EAC

cc

10/18/2005 04:36 PM

bcc

Subject Fw: Requested Documents

History: This message has been forwarded.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:35 PM —

Karen Lynn-Dyson/EAC/GOV

To aimee sherrill

10/18/2005 04:24 PM

cc

Subject Fw: Requested Documents

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:23 PM —



"Job Serebrov"  
<serebrov@sbcglobal.net>

To "Karen Lynn Dyson" <klynndyson@eac.gov>

08/19/2005 12:16 PM

cc

Subject Requested Documents

Karen:

Here are the documents that you requested.

Regards,



Job ResumeReg.doc Summary of Election Activities

028404



# **JOB SEREBROV**

2110 S. Spring St.  
Little Rock, AR 72206  
501.374.2176 (H)  
501.324.7330 (O)  
serebrov@sbcglobal.net

## **LEGAL**

### **PRACTICE:**

**Law clerk to Judge Lavenski R. Smith, U.S. Court of Appeals for the Eighth Circuit; 425 West Capitol Ave., Ste. 3110, Metropolitan Bank Bldg., Little Rock, Arkansas 72201**

Supervisor: Judge Lavenski R. Smith, 501.324.7310  
Hours per week: 40+Dates of employment: August 2004-August 2005

Job duties: Legal research for cases assigned monthly by the judge, drafting of case memorandums and opinions, review of administrative panel and death penalty appeals and attendance at oral argument when required

### **Private practice of law**

Supervisor: Self  
Hours per week: 40+Dates of employment: April 1991 - December 1998, May 1999 - July 2004

**Associate attorney, The Nixon Law Firm; 2340 Green Acres Road, Ste. 12, Fayetteville, Arkansas 72703**

Supervisor: David Nixon, 479. 582.0020  
Hours per week: 40+Dates of employment: December 1998-April 1999

### Areas of legal practice:

- Federal and state voting issues and election law
- Federal and state civil and criminal appeals and habeas petitions
- Discovery, trial preparation, trial briefs, trial strategy
- Legislative drafting and review
- Legislative and regulatory advocacy
- Initiatives and referendums
- Administrative law
- Constitutional law
- Legal research and writing
- Election consulting for federal and state candidates
- International development projects

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**Special Law Clerk, Judge Jay Finch, Nineteenth Judicial Circuit  
West, Division 3, 203 East Central, Bentonville, AR 72712**

Supervisor: Judge Jay Finch, 479.271.1020  
Hours per week: varied Dates of employment: December 1998-  
January 1999

Job duties: research and writing, attendance at hearings,  
drafting of the opinion

## **BAR**

### **ADMISSIONS:**

#### FEDERAL

- U.S. Supreme Court
- U.S. Court of Appeals for the following circuits:  
First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,  
Ninth, Tenth, D.C., and Federal
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of Federal Claims
- U.S. Court of International Trade

#### STATE

- Supreme Court of Oklahoma (1991)
- Supreme Court of Nebraska (1992)
- Supreme Court of Arkansas (1994)

#### LEGAL

##### ASSOCIATIONS

- Oklahoma Bar Association
- Nebraska Bar Association
- Arkansas Bar Association
- Inter-American Bar Association

## **BAR**

### **ACTIVITIES:**

**Chairman/Founder, Appellate Practice Committee, Arkansas Bar  
Association, Little Rock, Arkansas, 1993-1996**

**Member, Drafting Committee, Appeals in Arkansas, Arkansas Bar  
Association, Little Rock, Arkansas, 1996**

028406

**PUBLICATION:**

- "Arkansas Appellate Motion Practice" in *Handling Appeals in Arkansas*, Arkansas Bar Association, 1996

**LEGISLATIVE**

**EXPERIENCE:**

**Senior consultant, AfricaGlobal, Inc., Washington, D.C., March 2001-December 2003**

- Advised on African political and economic affairs
- Served as a liaison for the company in a sugar development/refinery project in the Caprivi region of Namibia and interacted with the Office of the Namibian President and National Assembly
- Retained by the Namibian government and AfricaGlobal to draft a sugar act

**Legislative Adviser to the Speaker of the Namibian National Assembly, the Director of the Namibian Election Commission, and the Vice Chancellor of the University of Namibia, January 2000-June 2002**

- Reviewed Namibian Election Code and drafted memorandum with recommended improvements
- Drafted national legislation merging the independent agricultural college into the University of Namibia system
- Drafted national legislation guaranteeing voting rights to agricultural workers

**Registered Election Expert with the United Nations, IFES, and the Electoral Institute of Southern Africa, 2002-present**  
**Consultant to various members of the Arkansas General Assembly, Little Rock, Arkansas, 1994-1999**

- Advised on constitutionality of proposed legislation
- Drafted legislation

**Consultant to the Arkansas Court of Appeals Redistricting Commission, Little Rock, Arkansas, 1996-1998**

- Drafted five redistricting bills and maps for the constitutionally required redistricting of the Court of Appeals

**Member of the Committee on Department of Corrections, Murphy Commission - Restructure of Arkansas Government, Little Rock, Arkansas, 1996-1997**

- Reviewed the existing structure of the state Department of Corrections
- Advised on how to streamline the department

**ADMINISTRATIVE & QUASI-JUDICIAL  
EXPERIENCE:**

**Commissioner, Little Rock Historic District Commission, Little Rock, Arkansas, 2005-2008**

- Enforce city regulations regarding alteration to structures in the Little Rock Historic District
- Sit as an administrative tribunal for approval of petitions under the Historic Design Guidelines

**Member, Board of Directors of the Arkansas Historic Museum, Little Rock, Arkansas, 2005-2006**

- Approve museum operations and budget
- Attend museum functions and fund raisers

**Director of International Development, Louisiana State University, 107 Hatcher Hall, Baton Rouge, Louisiana 70803**

Supervisor: Dr. Stephen Lucas, 225. 578.6801

Hours per week: 40+ Dates of employment: February 2000-August 2003

**Job duties:**

- Interacted with U.S. and state government agencies, NGOs, foreign governments and universities, and other LSU departments and officials
- Worked with the Louisiana congressional delegation to get a \$12.5 million international project funded in fiscal years 2002 and 2003
- Drafted a proposal for the president of the Louisiana Chemical Association and U.S. Senator John Breaux on building a regional system to neutralize transuranic waste from nuclear power plants
- Developed, drafted, wrote grants for, and administered international research, training, education, and consulting projects, especially those dealing with democratization issues
- Drafted and negotiated international contractual agreements for research and faculty and student exchange with universities and research centers

- Hired and supervised staff
- Drafted office budget, project budgets, and strategic plans
- Reorganized and expanded the role of the Office of International Development
- Advised the Office of International Programs and individual units on improving public relations; consulted on PR strategies

**Chairman, Committee for the Revision of the Arkansas Constitution, State Political Party of Arkansas, Little Rock, Arkansas, 1995-1996**

- Headed committee comprised of state legislators, attorneys, business people, and an appellate judge to review the proposed state Constitution and make recommendations

**Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas**

No supervisor                      Dates: 1990-1996

**Job duties:**

- Enforced election laws within the county
- Drafted administrative regulations for the commission
- Supervised the training of poll workers
- Evaluated various voting systems and purchased an optical scan system to be used countywide
- Prepared and defended annual budgets before the Washington County Quorum Court
- Sat as a member of an administrative tribunal
- Hired and supervised staff

**EDUCATION:**

- **Graduate Certificate, Election Governance, Griffith University, Queensland, Australia (2003)**
- **Master of Law, University of Arkansas School of Law, 204 Waterman Hall, Fayetteville, Arkansas 72701 (1993) Mini Thesis: "Water Rights in Indian Country"**
- **Juris Doctorate, Washburn University School of Law, 1700 College Ave., Topeka, Kansas 66621 (1984)**
- **Bachelor of Arts in History, Rutgers University, Administrative Services Bldg., 65 Davidson Road, Bush Campus, Piscataway, New Jersey 08854-8096 (1980)**

**REFERENCES:**

Judge Morris Arnold  
U.S. Court of Appeals  
for the Eighth Circuit  
P.O. Box 2060  
Little Rock, AR 72203-2060  
501.324.6880

Judge Lavenski Smith  
U.S. Court of Appeals  
for the Eighth Circuit  
425 West Capitol, Ste. 3110  
Little Rock, AR 72203  
501.324.7310

Brenda Turner  
Chief of Staff  
Office of the Governor  
State Capitol Building, Suite 250  
Little Rock, AR 72201  
501.682.3608

Judge Herb Ashby  
Former judge, Second Appellate District, Division 5  
2691 Baywater Place  
Thousand Oaks, CA 91362  
805.493.8205

Judge Jay Finch  
Nineteenth Judicial  
Circuit West, Division 3  
203 East Central  
Bentonville, AR 72712  
479.271.1020

Karen Lynn-Dyson/EAC/GOV

To Amie J. Sherrill/EAC/GOV@EAC

10/18/2005 04:38 PM

cc

bcc Adam Ambrogi/EAC/GOV

Subject Fw: Requested Documents

Aimee-

In case you couldn't open up the document which describes Job's elections background

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:36 PM —



"Job Serebrov"  
<serebrov@sbcglobal.net>

To klynndyson@eac.gov

08/19/2005 04:14 PM

cc

Subject Re: Requested Documents

Karen:

I enjoyed the discussion too. I really think that this project will be of national importance and can positively affect elections administration while providing an answer to the handling of the vote fraud problem for the future.

On another note, why don't you leave an evening free while I am there for dinner. I am trying to bring my wife along. If you can bring your husband it could make for an interesting evening.

Regards,

Job

Summary of Election Activities of Job Serebrov

Background to Election Problems in Arkansas

Ever since Reconstruction, Arkansas has had a history of election problems. The election fraud that gave rise to the Brooks-Baxter War in Arkansas in the 1870s involved people from both sides of the aisle voting more than once, the dead rising to cast a ballot or two, destroying ballots, creating ballots and making ballot boxes disappear. A strong one-party system

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perpetuated this tradition into modern times.

In 1995, I met with Arkansas Supreme Court Justice Tom Glaze to discuss voting issues and my efforts to clean up the electoral process. Although supportive, Justice Glaze encouraged me to proceed with caution. Before being elected to the Supreme Court, Justice Glaze had been employed in the 1960s by Gov. Win Rockefeller to clean up ballot fraud throughout Arkansas. He was nearly disbarred in the process by those involved in ballot fraud in a small, rural county.

Shortly after my discussion with Justice Glaze, I discovered how pervasive the election problems were in the state. For instance, ballot boxes were stuffed or disappeared into the night only to return altered. Contrary to state law, county sheriffs running in contested elections maintained custody of the ballot boxes. In one instance, 20 voted ballot boxes were found in the attic of a sheriff's deputy after he died.

#### Attorney (1991-2004)

In my private practice as an attorney, I represented numerous clients in county election contests throughout Arkansas. I also represented clients in matters before the Federal Election Commission. I have never lost an election case. Finally, I was hired as a consultant to a major nonprofit legal organization to review and summarize the 2002 amendments to federal election laws and apply the new law to 10 scenarios.

#### Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas (1990-1996)

This board consisted of three commissioners; I was the lone Republican. We were charged with supervising the training of poll workers, evaluating voting systems and then purchasing an optical scan system to be used countywide, preparing and justifying our annual budget before the Washington County Quorum Court, hiring and supervising staff and sitting as an administrative tribunal.

When I first came on the board, Washington County was primarily a one-party county and the Democrats were used to running elections according to tradition rather than the law. I had to battle with the two Democrats on the board to enforce election laws within the county. As I started to force the issue in the courts, the Republican Party gained strength. Four years later and after outlasting eight Democrat commissioners, I was able to work with new Democrat commissioners who recognized the need to enforce the law. At this point, the commission requested that I draft administrative regulations for the board. These remain in place today.

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Founder, President, General Counsel; Arkansans for Fair Elections (1994-1999)

In 1994, Gov. Mike Huckabee (R), then a candidate for lieutenant governor, asked me to serve as his general counsel for ballot fraud protection. Thinking it best to act independently of any candidate, I formed Arkansans for Fair Elections. I served as the organization's president and, later, general counsel. This group launched a statewide educational campaign to train poll watchers to recognize irregular or fraudulent electoral procedures; this included the creation of literature and a video. Our extensive public relations campaign brought media attention to the issue. We also organized a statewide team of citizen poll watchers and attorneys to ensure that the election laws were fairly enforced. We were so successful in the lieutenant governor's race that Arkansans for Fair Elections was asked to continue the effort until 1999 when I moved to Louisiana.

General Counsel - Ballot Fraud Protection Committee, Republican Party of Arkansas (1995-1999)

In late 1995, Asa Hutchinson, chairman of the Republican Party of Arkansas, appointed me as general counsel for the newly formed Ballot Fraud Protection Committee of the state party. I retained this position until 1999. I was responsible for coordinating statewide enforcement efforts and directing a legal team to respond to problematic situations prior to and on election day.

(Through my role with Arkansans for Fair Elections and the Ballot Fraud Protection Committee, I successfully sued or negotiated a settlement in more than two-thirds of the 75 counties in Arkansas over electoral irregularities.)

Legal Consultant to Republican Members of the Arkansas General Assembly (1994-1996)

Republicans in the General Assembly requested that I review and draft suggested changes to Arkansas election law. Based on my personal experience as an election commissioner and as an election attorney, I identified a number of areas of concern and drafted new statutes modeled on the best examples that I could find from other states. My proposal was not passed by the Democrat-controlled General Assembly as a package, however, several of its components were passed into law.

Consultant to the Arkansas Court of Appeals Redistricting Commission (1996-1999)

I drafted five redistricting bills and maps for the

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constitutionally required redistricting of the Arkansas Court of Appeals. These bills were based on current U.S. Supreme Court precedent regarding gerrymandering. I had to present each bill and give supporting testimony to the commission.

Director of International Development - Louisiana State University, Baton Rouge, Louisiana (2000-2003)

Part of my duties as director was to develop international cooperative projects. The theme of several of these proposals was democratization. In each case, I required review of the national election code of the country involved.

My activities in Namibia led to a request by the director of the Namibian Election Commission, Joram Rukambe and the Speaker of the Namibian National Assembly, Dr. Mose Tjitendero to review and suggest changes to the Namibian election code. This review took three months and resulted in proposed alterations a number of code sections. These suggestions were considered by the Namibian National Assembly and a number were incorporated into the code revisions. Additionally, I drafted legislation for the Speaker to guarantee voting rights to agricultural workers that were being denied by the owners of the farms. This legislation also was passed into law.

During this time, I was qualified as an election expert and placed on an election consultant list by the United Nations, IFES and the Electoral Institute of Southern Africa.

#### Related Memberships

- Republican Party of Arkansas (1990-1999)
  - Benton County, Arkansas, Republican Committee (1996-1999)
  - Washington County, Arkansas, Republican Committee (1990-1996)
- (When we moved to Louisiana in 1999, the party was in such turmoil that it was difficult to get involved. This past year, I have been prohibited by the Hatch Act from participating in partisan politics. This prohibition ends August 19 when my judicial clerkship ends.)

#### Related Education

- Graduate certificate in electoral governance, Griffith University, Queensland, Australia (2003)

028414

Karen Lynn-Dyson/EAC/GOV

11/14/2005 05:35 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Bert A.

bcc

Subject Fw: October Progress Report

FYI-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/13/2005 05:32 PM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
11/14/2005 05:27 PM

To klynndyson@eac.gov  
cc tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com, Vincelli@rutgers.edu, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "Johanna Dobrich" <jdobrich@eden.rutgers.edu>

Subject FW: October Progress Report

Tom O'Neill

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

**From:** Tom O'Neill [mailto:tom\_oneill@verizon.net]

**Sent:** Monday, November 14, 2005 5:26 PM

**To:** klynndyson@eac.gov

**Cc:** Vincelli@rutgers.edu; arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; ireed@rutgers.edu; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; rmandel@rci.rutgers.edu; 'Johanna Dobrich'; tokaji.1@osu.edu; foley.33@osu.edu; lauracw@columbus.rr.com

**Subject:** October Progress Report

Karen,

028415

Attached is the Progress Report for October. Please note that this report includes an attachment showing how our study classifies each state on key variables, such as counting out-of-precinct ballots, requirements for ballot evaluation, and other variables. It also displays how the data we used differs for some states for the vote counts reported by the Election Day Survey. We believe that our data is more accurate and complete (see for example the data for New Mexico and Pennsylvania).

I look forward to responding to any questions or concerns you or others at the EAC may have.

Tom O'Neill



OctoberFinal.doc

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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT**  
**October 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

November 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

028417

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from October 1 through October 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In October we focused on finalizing our Provisional Voting analysis paper, including the development of recommendations to the EAC for a draft guidance document and best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. (See the attachment to this Progress Report for the details.) The importance of this demanding effort was described in September's Progress Report.

Also in October we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We will seek a meeting with the EAC in the next several weeks to confer about the schedule to complete the project and alternative approaches that could speed the conclusion of our work.

We will submit to the EAC a final draft of our report, a preliminary guidance document, and draft best practices before Thanksgiving. We project that EAC will take 3 to 4 weeks to review and react to that final draft. And we understand that after its review, the EAC will decide if it should move towards issuing a Guidance Document or recommending best practices. If the EAC does decide to issue a Guidance Document on Provisional Voting, the time needed for a review by the advisory boards is likely to delay a public hearing until early February.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom\_oneill@verizon.net or by telephone at (908) 794-1030.

## **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, Tasks 3.5 and 3.6 are nearing completion.

**Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of Provisional Voting and develop alternative means to achieve the goals of Provisional Voting.**

## **LEGISLATION, REGULATIONS, AND LITIGATION**

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with Provisional Voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on Provisional Voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and has completed this research.

**Progress:** We have completed the memorandum outlining Provisional Voting legislative changes since the 2004 election and we are continuing to clarify the laws prior to these changes.

**Challenges:** The variety in the form and frequency of Provisional Voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The final analysis will be sent to the EAC by Thanksgiving.

## PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with Provisional Voting in 2004. The report findings from the survey of 400 local election officials are now complete. The survey results have proven to be instrumental in shaping our understanding of actual practice in administering Provisional Voting, including the steps local officials took to prepare for the election.

### PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with Provisional Voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to Provisional Voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** We completed a state-by-state narrative of developments in Provisional Voting and distributed it to the EAC and the PRG. This work has been helpful in understanding the context of the data collected on provisional voting from the states.

**Challenges:** The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent several revisions to incorporate up-to-date and reliable information. Now that so many other analyses, including the Election Day Survey, have been released, we were challenged by different interpretations of the same basic facts. But the reconciliation of interpretation and data collection has been invaluable in establishing rigor in our report.

**Work Plan:** We completed revisions of the narratives incorporating comments from the PRG and addressing any discrepancies between our findings and other interpretations of similar information included in other studies.

### PROVISIONAL VOTING STATISTICAL ANALYSIS

**Description:** During October the Eagleton research team continued to check its statistical analysis, and worked to reconcile the classifications of this analysis (such as states counting only those provisional ballots cast within the proper precinct versus states that counted ballots cast within the proper county) with the classification made in other parts of this study or in other studies (such as the Election Day Study or *Electionline* reports).

**Progress:** The effort to double check all of the classifications used in the study is complete. The results of this effort are displayed in the attachment to this progress report, "Characteristics of the Provisional Voting Process -- Classification of the States,"



beginning on page 9. Only Delaware and Arkansas remain unclear in regard to one of the measures, and both states have been contacted to receive clarification in this area..

**Challenges:** The difficulties encountered have been a result of communication delays and time constraints. Some states have been more responsive to our inquires about their practices than others. Overall, this is not an irresolvable problem but it does slow the process of completion down.

**Work Plan:** By early-November the final revision of the statistical analysis, which includes full reconciliation of all data within the study, will be complete. The reconciliation of data is displayed in the attachment to this progress report.

### **SURVEY OF COUNTY ELECTION OFFICIALS**

**Description:** The Eagleton Center for Public Interest Polling (CPIP) conducted a national survey of county election officials to measure several aspects of Provisional Voting.

**Progress:** The analysis of the survey results and findings report is complete. As a result of the critique by the PRG, the research team is revising and clarifying the descriptions of the survey design and sample selection process to make the research methods more transparent.

**Work Plan:** We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5. We will include necessary clarifications regarding survey design and sample selection in the final analysis and alternatives document.

<p><b>Task 3.6: Prepare preliminary draft guidance document.</b></p>
--

The report and recommendations now nearing completion constitutes the draft preliminary guidance document. Based on our conversation with the EAC, the draft gives the EAC the option of proceeding with a guidance document or issuing recommendations to the state for best practices, recommendations that would not constitute voluntary guidance. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we will await the EAC's decision on how to proceed.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is becoming the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The 50 State (plus the District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** Analysis of voter identification data has begun and will increasingly become the central focus of our work.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

## VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also used exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

**Challenges:** The analysis of these data had been postponed until the data reconciliation of Provisional Voting is complete. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID had been temporarily placed on hold. We are now beginning data analysis on the impact of voter identification requirements on voter turnout.

**Work Plan:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early December. Early January is our target to deliver the draft report and outline of alternative policies to the Peer Review Group. In mid January, the EAC would receive a draft report and recommendations that take into account the comments of the PRG.

## **PROJECT MANAGEMENT**

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** Eagleton has stayed in touch with members of the Peer Review Group since the September 21<sup>st</sup> conference call, and has solicited their final comments on the Provisional Voting research. During October, we telephoned two members who did not participate in the conference call to confirm their commitment to serving as members of the Peer Review Group. Profess Guy Charles affirmed his interest. Professor Pamela Karlan did not return the call. The revisions in the schedule for the project have now made it possible to begin the process of scheduling a meeting of the PRG to consider our draft report and recommendations on Voter Identification Issues. We anticipate that meeting will take place the second week of January.

**Challenges:** No new challenges were encountered during October.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

### INTRANET

**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

### FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project October 1- October 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

028424

## ATTACHMENT TO OCTOBER PROGRESS REPORT

### **Characteristics of the Provisional Voting Process Classification of the States**

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

028425

## New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting<sup>1</sup> and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

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<sup>1</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

028426

<b>Table 1 CATEGORIZATION OF STATES -- Old vs New</b>		
<b>Old States</b>	<b>New States</b>	<b>HAVA Exempt or NA</b>
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
<b>26</b>	<b>18</b>	<b>7</b>

Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>2</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline’s criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases

<sup>2</sup> “Election Preview 2004: What’s changed, What Hasn’t and Why”. This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

028427

because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

<b>Had Database 2004</b>	<b>No Database A-N</b>	<b>No Database N-W</b>	<b>HAVA Exempt or NA</b>
Alaska	Alabama	Ohio	Idaho
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Iowa	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
<b>16</b>	<b>27</b>		<b>8</b>

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

#### Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as “out-of-precinct.” States that invalidated such ballots were categorized as “In-precinct only.”

028428



**Table 3**  
**CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots**

<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
<b>17</b>	<b>26</b>	<b>7</b>

**Voter Identification**

We relied on Electionline studies, including the Voter Identification study<sup>3</sup> and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.<sup>4</sup> The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

<sup>3</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>

<sup>4</sup> In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

**Table 4****CATEGORIZATION OF STATES -- Forms of Identification Required**

*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<b>Give Name</b>	<b>Sign Name</b>	<b>Match Signature</b>	<b>Provide ID</b>	<b>Photo ID</b>
<i>Maine</i>	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
<i>New Hampshire</i>	<i>Idaho</i>	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
<i>Wisconsin</i>	Michigan	West Virginia	Georgia	
<i>Wyoming</i>	Minnesota		Kentucky	
	<i>Mississippi</i>		Missouri	
	Nebraska		Montana	
	New Mexico		<i>North Dakota</i>	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
<b>9</b>	<b>14</b>	<b>8</b>	<b>15</b>	<b>5</b>

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

### Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

028430

**Table 5****CATEGORIZATION OF STATES – Ballot Evaluation Methods**

*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<b>Signature Match</b>	<b>Data Match</b>	<b>Affidavit</b>	<b>Return with ID</b>	<b>NA</b>
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

**Data Collection**

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

028431

<b>Table 6</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>5</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>6</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>7</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>5</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>6</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>7</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

028432


## Data Differences with Election Day Study

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	N/A	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

028433

Karen Lynn-Dyson/EAC/GOV  
11/17/2005 09:53 AM

To john.weingart@rutgers.edu  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: Provisional Voting Report Status and Request for Advice  


John-

We'll try and get you an answer on some of these by tomorrow.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>



"John Weingart "  
<john.weingart@rutgers.edu>

11/15/2005 10:53 AM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel"  
<rmandel@rci.rutgers.edu>  
cc "Tom O'Neill" <Tom\_Oneill@verizon.net>  
Subject Provisional Voting Report Status and Request for Advice

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18<sup>th</sup>. Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

028434

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12<sup>th</sup> on the report we send you at the end of this week?
3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)
4. In any case, we will need a no-cost extension to the contract to carry us past December 31<sup>st</sup> . How do we make that request?
5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290



KeyDatesRev1110.doc

028435

**DRAFT FOR DISCUSSION**

**REVISED SCHEDULE FOR EAC PROJECT**

**November 2005 – February 2006**

November 10, 2005

Assumes no guidance document, only analysis and recommended best practices

<b>DATE</b>	<b>Project Management</b>	<b>Provisional Voting</b>	<b>Voter ID</b>
<b>Week of 10/31</b>		Review draft report to EAC (Team)  Submit comments on report (Team)	Voter ID Research to TV
<b>Week of 11/7</b>	Status reports to JD for October tasks (all)	Redraft report (TON)  Review and approve report (Team)  Final draft report (TON)	Research continues (TV)
<b>Week of 11/14</b>	Submit monthly progress report (JD)	<b>Submit report to EAC for review</b> and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW)  EAC reviews report	Research continues (TV)
<b>Week of 11/21</b>		EAC review continues	Complete data collection for Voter ID analysis. (TV)
<b>Week of 11/28</b>		EAC review continues	Draft report on Voter ID analysis (TV)

028436



**DRAFT FOR DISCUSSION**

<b>Week of 12/5</b>	Status reports to JD for November tasks (all)	EAC review continues	Internal review (PT)
<b>Week of 12/12</b>	Submit monthly progress report (JD)	Receive EAC comments on report  Revise and PT review	Revise draft (TV)  Draft alternatives (TON)  Review and comment on alternatives (PT)
<b>Week of 12/19</b>		<b>Finalize analysis and best practices to EAC for publication<sup>1</sup></b>	Complete draft report and alternatives (TV, TON)
<b>Week of 12/26</b>			Review draft report and alternatives (PT)
<b>Week of 1/2/06</b>	Status reports to JD for December tasks (all)		<b>Report and alternatives to PRG</b>
<b>Week of 1/9/06</b>			PRG meets and comments  Revise (TV & TON)

<sup>1</sup> If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days. 028437

**DRAFT FOR DISCUSSION**

<p><b>Week of 1/16/06</b></p>	<p>Submit monthly progress report (JD)</p>		<p><b>Submit draft report, alternatives and compendium to EAC</b></p> <p>EAC reviews</p>
<p><b>Week of 1/23/06</b></p>			<p>EAC review continues</p>
<p><b>Week of 1/30/06</b></p>			<p>Comments from EAC</p> <p>Revise (TV &amp; TON)</p>
<p><b>Week of 2/6/06</b></p>	<p>Status reports to JD for January tasks (all)</p>		<p>Review and approve revised report and recommendations for best practices (PT)</p>
<p><b>Week of 2/13/06</b></p>	<p>Submit monthly progress report (JD)</p>		<p><b>Submit report and best practices to EAC</b></p>
<p><b>Week of 2/20/06</b></p>	<p>FINAL status reports to JD for all tasks (all)</p> <p>Final project and fiscal report to EAC</p> <p><b>PROJECT ENDS</b></p>		

028438

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson/EAC/GOV@EAC

11/28/2005 12:04 PM

cc Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC

bcc

Subject Fw: Final Best Practices Document on Provisional Voting

History: This message has been forwarded

Julie-

Just received this document from Eagleton.

Shall we discuss next steps on Tuesday afternoon or early Wednesday?

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/27/2005 11:58 AM —



"Johanna Dobrich "  
<jdobrich@eden.rutgers.edu>

To klynndyson@eac.gov

cc

11/28/2005 11:17 AM

Subject Final Best Practices Document

Dear Ms. Karen Lynn-Dyson:

Attached please find the final draft 'Best Practices to Improve Provisional Voting Report' completed by the Eagleton Institute of Politics, and Mortiz College of Law.

Please note that our report has two attachments, the first of which is appended directly within the text of the report, and the second of which is a separate excel document. In addition to this electronic submission I will be sending you a hard copy, via FedEx of these materials later today.

Please let me know if you have any difficulty opening the files.

Sincerely,

Johanna Dobrich

--

Johanna Dobrich  
Eagleton Institute of Politics  
Rutgers University  
jdobrich@eden.rutgers.edu

028439



Best Practices FINAL 11.23.05.doc Final Best Practices\_\_attachment Two.xls

028440

**DRAFT**

Report to the  
U. S. Election Assistance Commission  
On  
Best Practices to Improve Provisional Voting  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252

November 23, 2005

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Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

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The Moritz College of Law, The Ohio State University

028441

**Deliberative Process  
Privilege**

**FINAL DRAFT**

11/23/2005

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Report to the  
U. S. Election Assistance Commission  
Best Practices to Improve Provisional Voting

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Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.<sup>1</sup>

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.<sup>3</sup> The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that the ballot must be cast in order to be counted.<sup>4</sup>

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, include first-time voters who cannot provide identification, as required under HAVA, and voters who were

<sup>1</sup> Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

<sup>3</sup> The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See www.electioncenter.org

<sup>4</sup> The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6<sup>th</sup> Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer, had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

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challenged at the poll.<sup>5</sup> HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

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Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.<sup>6</sup>

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These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.<sup>7</sup> State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."<sup>8</sup>)

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The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country.

One important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>9</sup>

<sup>5</sup> The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.html>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004.)

<sup>6</sup> These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

<sup>7</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>8</sup> Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

<sup>9</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.<sup>10</sup> That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing the "new" states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such

<sup>10</sup> Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, the entire department's employees were mobilized to process provisional ballots." (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots – as measured by intrastate consistency in administration— will be harder and take longer to achieve.<sup>11</sup>

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- 2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification.<sup>12</sup>
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.
- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>13</sup> In states using provisional voting for the first time, states with

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<sup>11</sup> Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election. " Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.

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<sup>12</sup> See Table 2 in Appendix 2 for information on the verification method used in each state.

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<sup>13</sup> The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

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registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.<sup>14</sup>
  - In experienced states, the disparity was even more pronounced; 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.<sup>15</sup>

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.<sup>16</sup> Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."<sup>17</sup>

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Election Line reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.

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<sup>14</sup> The Election Day Survey concluded that: "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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<sup>15</sup> This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

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<sup>16</sup> For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

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<sup>17</sup> Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report observed that, ". . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

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- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

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 Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.<sup>14</sup>¶  
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 The Election Day Study found that jurisdictions with lower education and income tend to report more inactive voter registrations, lower voting turnout, higher number of provisional ballots case, lower average number of poll workers per polling place and greater percentage of inadequately staffed polling places. These differences in demographics and resources produce different experiences with provisional voting.<sup>19</sup>¶

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**Effectiveness of Provisional Voting**

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available.

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We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know, that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

Not knowing the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

**Estimates of Votes Lost In 2000 Presidential Election**

Votes Lost (Millions)	Cause
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

**Table 1 Cal Tech – MIT Voting Technology Project Estimates**  
4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost). Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states<sup>20</sup> came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

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Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.<sup>21</sup>

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Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota.

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Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

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This litigation was significant nonetheless.

\* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

<sup>20</sup> Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

<sup>21</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the entire department's employees were mobilized to process provisional ballots." The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

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- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second –and significantly– the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

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There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

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**Need for Promulgation of Best Practices**

Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

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The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

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**Recommendations for Best Practices**

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

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**Self-evaluation of Provisional Voting –4 Key Questions**

The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

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If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

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**Best Practices For Each Step In The Process**

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

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**The Importance of Clarity**

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result— well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."<sup>22</sup>

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

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<sup>22</sup> The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.



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- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.<sup>23</sup> Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.<sup>24</sup>
- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.<sup>25</sup> Recent legislation in Arizona indicates that the EAC's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.<sup>26</sup>

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**A. Registration and Pre-Election Information for Voters**

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."<sup>27</sup>

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<sup>23</sup> See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

<sup>24</sup> See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

<sup>25</sup> *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6<sup>th</sup> Cir. 2004)

<sup>26</sup> *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

<sup>27</sup> Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina), they can verify their registration on the website.

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2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.<sup>28</sup>

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3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

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B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>29</sup> After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>30</sup> Such statutory direction could help other states ensure uniform instruction of poll workers.

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2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>31</sup> At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the

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<sup>28</sup> The Century Foundation, op. cit.

<sup>29</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>30</sup> 2005 N.M. Laws 270 page no. 4-5.

<sup>31</sup> Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

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number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>32</sup>

- 4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.<sup>33</sup>

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C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."<sup>34</sup> Nonetheless, the *Panio v. Sutherland*<sup>35</sup> decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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- 1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted

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<sup>32</sup> Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

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<sup>33</sup> 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4.

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<sup>34</sup> The Century Foundation, op. cit.

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<sup>35</sup> 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

<sup>37</sup> In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.<sup>37</sup>

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2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct.<sup>38</sup> The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location.<sup>39</sup>
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.<sup>40</sup>

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Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

- RFS (Rejection federal or state) No federal or state candidates or issues to duplicate.
- RNS (Rejection not signed) Provisional Ballot Affidavit not signed.
- RIN (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
- RNR (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
- REE (Rejection envelope empty) Provisional ballot envelope is empty.
- RAB (Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
- REV (Rejection based on ballot cast in early voting) Voter voted early.

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<sup>38</sup> See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

<sup>39</sup> Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

<sup>40</sup> 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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- RIP (Rejection based on incorrect party) Incorrect Party in Primary Election.
- RFE (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
- RWC (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
- RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
- RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

### D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections Formatted: Bullets and Numbering
2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available. Formatted: Bullets and Numbering

### E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

**Broader Considerations**

**G. Integrity and the Appearance of Integrity**

1. State laws or regulations providing for non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public.

**H. Continuous Assessment of the Provisional Ballot – Process and Performance**

Defining what constitutes a successful provisional voting system is difficult. As noted earlier, the most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

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Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system. Pending such a review, the EAC can recommend that states take the following actions.

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1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:

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- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (Jack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
- Measures of variance among jurisdictions.
- Number of poll workers trained in administration of provisional voting by polling place
- Number of jurisdictions posting information on provisional voting in the polling place
- Time required to evaluate ballots by jurisdiction

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Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

**Conclusion – Research-based, continuing improvements for provisional voting are needed**

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The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

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1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.
3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

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Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

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**ATTACHMENT 1 -- Characteristics of the Provisional Voting Process****Classification of the States**

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

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We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.



New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting<sup>41</sup> and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

**Comment [o2]:** It would be useful here to insert a table showing our classification as old or new.

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We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

**Comment [o3]:** Under this criterion, how did Florida become an “old” state?

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

<sup>41</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

**Table 1**  
**CATEGORIZATION OF STATES – Old vs New**

<u>Old States</u>	<u>New States</u>	<u>HAVA Exempt or NA</u>
<u>Alaska</u>	<u>Connecticut</u>	<u>Idaho</u>
<u>Alabama</u>	<u>Delaware</u>	<u>Maine</u>
<u>Arkansas</u>	<u>Georgia</u>	<u>Minnesota</u>
<u>California</u>	<u>Hawaii</u>	<u>New Hampshire</u>
<u>Colorado</u>	<u>Illinois</u>	<u>North Dakota</u>
<u>DC</u>	<u>Indiana</u>	<u>Wisconsin</u>
<u>Florida</u>	<u>Louisiana</u>	<u>Wyoming</u>
<u>Iowa</u>	<u>Massachusetts</u>	
<u>Kansas</u>	<u>Missouri</u>	
<u>Kentucky</u>	<u>Montana</u>	
<u>Maryland</u>	<u>Nevada</u>	
<u>Michigan</u>	<u>Oklahoma</u>	
<u>Mississippi</u>	<u>Pennsylvania</u>	
<u>Nebraska</u>	<u>Rhode Island</u>	
<u>New Jersey</u>	<u>South Dakota</u>	
<u>New Mexico</u>	<u>Tennessee</u>	
<u>New York</u>	<u>Utah</u>	
<u>North Carolina</u>	<u>Vermont</u>	
<u>Ohio</u>		
<u>Oregon</u>		
<u>South Carolina</u>		
<u>Texas</u>		
<u>Virginia</u>		
<u>Washington</u>		
<u>West Virginia</u>		
<b>26</b>	<b>18</b>	<b>7</b>

Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>42</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

<sup>42</sup> "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

**Table 2**  
**CATEGORIZATION OF STATES -- Statewide Registration Database**

<u>Had Database 2004</u>	<u>No Database A-N</u>	<u>No Database N-W</u>	<u>HAVA Exempt or NA</u>
<u>Alaska</u>	<u>Alabama</u>	<u>Ohio</u>	<u>Iowa</u>
<u>Arizona</u>	<u>Arkansas</u>	<u>Oregon</u>	<u>Maine</u>
<u>Connecticut</u>	<u>California</u>	<u>Pennsylvania</u>	<u>Mississippi</u>
<u>Delaware</u>	<u>Colorado</u>	<u>Rhode Island</u>	<u>Minnesota</u>
<u>District of Columbia</u>	<u>Florida</u>	<u>Tennessee</u>	<u>New Hampshire</u>
<u>Georgia</u>	<u>Idaho</u>	<u>Texas</u>	<u>North Dakota</u>
<u>Hawaii</u>	<u>Illinois</u>	<u>Utah</u>	<u>Wisconsin</u>
<u>Kentucky</u>	<u>Indiana</u>	<u>Vermont</u>	<u>Wyoming</u>
<u>Louisiana</u>	<u>Kansas</u>	<u>Virginia</u>	
<u>Massachusetts</u>	<u>Maryland</u>	<u>Washington</u>	
<u>Michigan</u>	<u>Missouri</u>		
<u>New Mexico</u>	<u>Montana</u>		
<u>Oklahoma</u>	<u>Nebraska</u>		
<u>South Carolina</u>	<u>Nevada</u>		
<u>South Dakota</u>	<u>New Jersey</u>		
<u>West Virginia</u>	<u>New York</u>		
	<u>North Carolina</u>		
<b>16</b>	<b>27</b>		<b>8</b>

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Comment [04]:

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

<b>Table 3</b>		
<b>CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots</b>		
<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

#### Voter Identification

We relied on Electionline studies, including the Voter Identification study<sup>43</sup> and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.<sup>44</sup> The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

**Table 4**  
**CATEGORIZATION OF STATES – Forms of Identification Required**

<sup>43</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>

<sup>44</sup> In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

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*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<u>Give Name</u>	<u>Sign Name</u>	<u>Match Signature</u>	<u>Provide ID</u>	<u>Photo ID</u>
<i>Maine</i>	<u>California</u>	<u>Illinois</u>	<u>Alabama</u>	<u>Florida</u>
<i>Massachusetts</i>	<u>DC</u>	<u>Nevada</u>	<u>Alaska</u>	<u>Hawaii</u>
<i>New Hampshire</i>	<u>Idaho</u>	<u>New Jersey</u>	<u>Arizona</u>	<u>Louisiana</u>
<i>North Carolina</i>	<u>Indiana</u>	<u>New York</u>	<u>Arkansas</u>	<u>South Carolina</u>
<i>Rhode Island</i>	<u>Iowa</u>	<u>Ohio</u>	<u>Colorado</u>	<u>South Dakota</u>
<i>Utah</i>	<u>Kansas</u>	<u>Oregon</u>	<u>Connecticut</u>	
<i>Vermont</i>	<u>Maryland</u>	<u>Pennsylvania</u>	<u>Delaware</u>	
<i>Wisconsin</i>	<u>Michigan</u>	<u>West Virginia</u>	<u>Georgia</u>	
<i>Wyoming</i>	<u>Minnesota</u>		<u>Kentucky</u>	
	<u>Mississippi</u>		<u>Missouri</u>	
	<u>Nebraska</u>		<u>Montana</u>	
	<u>New Mexico</u>		<u>North Dakota</u>	
	<u>Oklahoma</u>		<u>Tennessee</u>	
	<u>Washington</u>		<u>Texas</u>	
			<u>Virginia</u>	
<b>9</b>	<b>14</b>	<b>8</b>	<b>15</b>	<b>5</b>

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Comment [o5]: Again, this would work better as a table.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

**Table 5**  
**CATEGORIZATION OF STATES – Ballot Evaluation Methods**  
*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<u>Signature Match</u>	<u>Data Match</u>	<u>Affidavit</u>	<u>Return with ID</u>	<u>NA</u>
<u>Alaska</u>	<u>Alabama</u>	<u>Connecticut</u>	<u>Indiana</u>	<u>Idaho</u>
<u>California</u>	<u>Arizona</u>	<u>Delaware</u>	<u>Iowa</u>	<u>Maine</u>
<u>Florida</u>	<u>Arkansas</u>	<u>Georgia</u>	<u>Kansas</u>	<u>Mississippi</u>
<u>Oregon</u>	<u>Colorado</u>	<u>Hawaii</u>	<u>Maryland</u>	<u>Minnesota</u>
	<u>DC</u>	<u>Illinois</u>	<u>Michigan</u>	<u>New Hampshire</u>
	<u>Louisiana</u>	<u>Kentucky</u>	<u>Montana</u>	<u>N. Carolina</u>
	<u>Missouri</u>	<u>Massachusetts</u>	<u>New Jersey</u>	<u>N. Dakota</u>
	<u>Ohio</u>	<u>Nebraska</u>	<u>New Mexico</u>	<u>Wisconsin</u>
	<u>Oklahoma</u>	<u>Nevada</u>	<u>Texas</u>	<u>Wyoming</u>
	<u>Pennsylvania</u>	<u>New York</u>	<u>Utah</u>	
	<u>Rhode Island</u>	<u>South Dakota</u>		
	<u>S. Carolina</u>	<u>Tennessee</u>		
	<u>Washington</u>	<u>Vermont</u>		
	<u>West Virginia</u>	<u>Virginia</u>		
<u>4</u>	<u>14</u>	<u>14</u>	<u>10</u>	<u>9</u>

**Data Collection**

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

<b>Table 6</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
<u>California</u>	<u>Alabama</u>
<u>District of Columbia</u>	<u>Alaska</u> <sup>45</sup>
<u>Florida</u>	<u>Arizona</u>
<u>Hawaii</u>	<u>Arkansas</u>
<u>Indiana</u>	<u>Colorado</u>
<u>Iowa</u>	<u>Connecticut</u>
<u>Kansas</u>	<u>Delaware</u>
<u>Louisiana</u>	<u>Georgia</u>
<u>Maryland</u> <sup>46</sup>	<u>Idaho</u>
<u>Missouri</u>	<u>Illinois</u>
<u>Montana</u>	<u>Kentucky</u>
<u>Nebraska</u> <sup>47</sup>	<u>Maine</u>
<u>Nevada</u>	<u>Massachusetts</u>
<u>New Jersey</u>	<u>Michigan</u>
<u>New Mexico</u>	<u>Minnesota</u>
<u>Ohio</u>	<u>Mississippi</u>
<u>Oklahoma</u>	<u>New Hampshire</u>
<u>Oregon</u>	<u>New York</u>
<u>Pennsylvania</u>	<u>North Carolina</u>
<u>Rhode Island</u>	<u>North Dakota</u>
<u>South Dakota</u>	<u>South Carolina</u>
<u>Tennessee</u>	<u>Utah</u>
<u>Texas</u>	<u>Vermont</u>
<u>Virginia</u>	<u>Wisconsin</u>
<u>Washington</u>	<u>Wyoming</u>
<u>West Virginia</u>	
<b>26 States</b>	<b>25 States</b>

<sup>45</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>46</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>47</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

**Data Differences**

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

<u>State</u>	<u>EDS Numbers Cast/Counted</u>	<u>Our Numbers Cast/Counted</u>	<u>Differences</u>	<u>Updated Info from State?</u>
<u>Alabama</u>	<u>6,478/1,865</u>	<u>6560/1836</u>	<u>82/29</u>	<u>No</u>
<u>Alaska</u>	<u>23,285/22,498</u>	<u>23,275/22,498</u>	<u>10/0</u>	<u>No</u>
<u>Colorado</u>	<u>51,529/39,086</u>	<u>51,477/39,163</u>	<u>52/77</u>	<u>No</u>
<u>Georgia</u>	<u>12,893/4,489</u>	<u>12,893/3,839</u>	<u>0/650</u>	<u>No</u>
<u>Hawaii</u>	<u>346/25</u>	<u>348/25</u>	<u>2/0</u>	<u>Yes</u>
<u>Iowa</u>	<u>15,406/8,038</u>	<u>15,454/8,048</u>	<u>48/10</u>	<u>Yes</u>
<u>Kansas</u>	<u>45,535/32,079</u>	<u>45,563/31,805</u>	<u>28/274</u>	<u>Yes</u>
<u>Montana</u>	<u>688/378</u>	<u>653/357</u>	<u>35/21</u>	<u>Yes</u>
<u>Nebraska</u>	<u>17,421/13,788</u>	<u>17,003/13,298</u>	<u>418/490</u>	<u>Yes</u>
<u>Nevada</u>	<u>6,153/2,446</u>	<u>6,154/2,447</u>	<u>1/1</u>	<u>Yes</u>
<u>New Mexico</u>	<u>6,410/2,914</u>	<u>15,360/8,767</u>	<u>8,950/5,853</u>	<u>Yes</u>
<u>N. Carolina</u>	<u>77,469/50,370</u>	<u>77,469/42,348</u>	<u>0/8,022</u>	<u>No</u>
<u>Ohio</u>	<u>157,714/123,902</u>	<u>158,642/123,548</u>	<u>928/354</u>	<u>Yes</u>
<u>Pennsylvania</u>	<u>No data</u>	<u>53,698/26,092</u>	<u>53,698/26,092</u>	<u>Yes</u>
<u>Texas</u>	<u>35,282/7,156</u>	<u>36,193/7,770</u>	<u>911/614</u>	<u>Yes</u>
<u>Vermont</u>	<u>121/30</u>	<u>101/37</u>	<u>20/7</u>	<u>No</u>
<u>Virginia</u>	<u>4,608/728</u>	<u>4,609/728</u>	<u>1/0</u>	<u>Yes</u>
<u>Washington</u>	<u>92,402/73,806</u>	<u>86,239/69,273</u>	<u>6,163/4,533</u>	<u>Yes</u>
<u>Wisconsin</u>	<u>374/119</u>	<u>373/120</u>	<u>1/1</u>	<u>No</u>

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Attachment 1 Characteristics of the Provisional Voting Process, Classification of the States¶

Attachment 2 State Provisional Voting Systems, Comparative Tables¶

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)\*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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\* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

**Table 3 -- Information for Voters**

<b>Provided on State Elections Website?</b>					
<u>States</u>	<u>PV Requirements</u>	<u>VID Requirements</u>	<u>Registration Verification</u>	<u>Precinct Verification</u>	<u>Notification of Voters</u>
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshire	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties

<b>Provided on State Elections Website?</b>					
<u>States</u>	<u>PV Requirements</u>	<u>VID Requirements</u>	<u>Registration Verification</u>	<u>Precinct Verification</u>	<u>Notification of Voters</u>
West Virginia	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Karen Lynn-Dyson/EAC/GOV  
12/05/2005 04:30 PM

To john.weingart@rutgers.edu  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: No Cost Extension Request 

John-

Just wanted to let you know that we've had to push back, by a week, the review of Eagleton's Best Practices document.

EAC staff are very focused on the release of the Voting Systems Guidelines; this will be completed by mid-week next week. I'm told that the Commissioners will turn their attention to the Best Practices document, immediately following this.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

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Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC

12/07/2005 11:59 AM

cc

bcc

Subject Something to look forward to— or life after the VVSG

Hey-

I've had a chance to take a close look at the Eagleton Best Practices document.

I find it very confusing ( to say the least) and think it is a very long way from a Best Practices document we would want to or could use for our constituency.

Look forward to you all's thoughts and insights about next steps.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028473

Karen Lynn-Dyson/EAC/GOV

12/13/2005 01:41 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Eileen L. Collver/EAC/GOV@EAC

cc

bcc

Subject Fw: November's Progress Report

Eagleton's latest monthly report for your Commissioner's review.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 12/12/2005 01:39 PM —



"Johanna Dobrich"  
<jdobrich@eden.rutgers.edu>

12/13/2005 12:29 PM

To klynndyson@eac.gov

cc "tim.vercellotti@rutgers.edu" <tim.vercellotti@rutgers.edu>, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com, tom\_oneill@verizon.net

Subject November's Progress Report

Dear Ms. Karen Lynn-Dyson:

Attached please find the Eagleton/Moritz Progress Report for the month of November.

Please direct any questions about this report to Tom O'Neill (tom\_oneill@verizon.net).

Sincerely,

Johanna Dobrich

--

Johanna Dobrich  
jdobrich@eden.rutgers.edu



ProgressReport\_NOVEMBER 2005\_Eagleton Institute of Politics.doc

028474



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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT**  
**November 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

December 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from November 1 through November 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In November we completed and submitted our Provisional Voting analysis paper, including recommendations to the EAC for best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group on that research. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. The importance of this demanding effort was described in October's Progress Report. We continue to await the EAC's comments on that final draft.

Also in November we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We made a written request to the EAC for a no-cost extension of the contract through the end of February which we understand is likely to be approved before Christmas.

Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research. We have been advised that EAC will take several weeks to review and react to our final draft on provisional voting. As we await a January meeting on that topic, we are moving ahead

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quickly on the statistical analysis of voter identification data and summarizing the legal research that was completed earlier.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom\_oneill@verizon.net or by telephone at (908) 794-1030.

### **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November.

#### **Task 3.6: Prepare preliminary draft guidance document.**

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. That recommendation followed agreement by the EAC with that course of action. The submission of that report and recommendations, however, constitutes the document required under this task. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

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## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is the principal focus of our research at this time.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The 50 state (plus District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C. Moritz has completed its review of voter identification litigation. Moritz and Eagleton have worked together to review the research, clarify the categorization of that research on our charts, and reconcile the data developed in our two different research techniques categorizations.

**Challenges:** The biggest challenge facing the reconciliation process of research findings, descriptions and categorizations is that it is being done by two different teams (Moritz and Eagleton) who rely on different primary source materials. Despite the necessity this has created to reconcile conflicting data from time to time, the collaboration has also been very beneficial because it has made our research efforts more rigorous.

**Work Plan:** During December we will conclude our reconciliation and continue analysis of voter identification research, including an analysis of the most important issues and trends in voter identification litigation.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

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During the month of November, we developed narratives to establish how laws were passed, looking at when they were proposed and when they were eventually enacted. In the upcoming month, Eagleton will examine voter registration forms across the states to see what forms of identification are requested from mail-in registrants. The difficulty will be determining the 2004 status of the states.

### VOTER ID AND TURNOUT ANALYSIS

Now under way is a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. In November, we have analyzed both aggregate- and individual-level data to determine whether there is any relationship between voter turnout and the various forms of voter identification states require.

**Progress:** Analysis is under way for two data sets: County-level data that includes registration and turnout rates for 2000 and 2004, as well as Census measures and indicators of the type of voter identification requirements that were in existence at the time of the 2004 presidential election. The second data set consists of the voter supplement to the November 2004 Current Population Survey. This data set allows for testing of the same hypotheses at the individual level. Preliminary findings from the aggregate data set suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. This is a first cut at the data, however, and we will be adding a number of control variables to the analysis to see if the relationship holds.

**Challenges:** These analyses use hierarchical linear modeling. Because voter identification requirements vary by state, one must pay special attention to other, unseen state-level influences on the data. The models are difficult to run and interpret, so the analyses are time-consuming.

**Work Plan:** The statistical analyses will continue during the month of December, and a draft of the findings is anticipated by the end of the month.

### PROJECT MANAGEMENT

#### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

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**Progress:** During the month of November, Eagleton contacted the PRG Members on two occasions. First, all members received the final draft provisional voting report that was submitted to the EAC. Further comments are welcome but not expected from the PRG. Second, we have asked PRG members to reserve two dates in mid-January for potential conference call sessions to review the voter identification report.

**Challenges:** No new challenges were encountered during November.

## COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

### INTRANET

**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

## **FINANCIAL REPORT**


The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

028479

A detail of expenses incurred from project November 1- November 30, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

028480

Karen Lynn-Dyson/EAC/GOV  
01/06/2006 02:14 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc john.weingart@rutgers.edu  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: Schedule for review of Provisional Voting paper 

Tom-

I have forwarded your inquiry on to the key EAC staff involved with the review of the Eagleton/Moritz provisional voting best practices document.

Once I have gotten a sense of the dates and times for their review, I will be certain to let you know.

Regards-  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
01/06/2006 11:28 AM

To klynndyson@eac.gov  
cc john.weingart@rutgers.edu  
Subject Schedule for review of Provisional Voting paper

Karen: I hope the New Year has started well for you.

Can you please give me your current best estimate of when we will hear from the EAC in response to the draft report and recommendations on provisional voting. We have some scheduling issues to resolve with the completion of the work on Voter ID, and reducing the uncertainty about discussion and further revision on the provisional voting piece would be helpful in clarifying our calendar.

Tom O'Neill

028481

Karen Lynn-Dyson/EAC/GOV

02/14/2006 08:52 AM

To Gracia Hillman/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc Sheila A. Banks/EAC/GOV@EAC, Adam  
Ambrogio/EAC/GOV@EAC

bcc

Subject Comments on the Eagleton Best Practices Document?

I've received written comments from Donetta, Paul and Julie.

Are there comments you would like to add, as I prepare a summary document for Eagleton?

Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028482

Karen Lynn-Dyson/EAC/GOV  
02/16/2006 01:32 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, foley.33@osu.edu,  
ireed@rutgers.edu, "Johanna Dobrich"  
bcc Adam Ambrogi/EAC/GOV

Subject Re: January Progress Report 

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

Shall we schedule a conference call for Friday , February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?


Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028483



Karen Lynn-Dyson/EAC/GOV  
02/21/2006 02:22 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC,  
Eileen L. Colver/EAC/GOV@EAC, Nicole  
bcc  
Subject Re: Meeting with EAC in March 

Tom-

I will begin to poll the Commissioners to get a sense of when they might be available to do a "close out " meeting with Eagleton.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
02/21/2006 10:45 AM

To klyndyson@eac.gov  
cc  
Subject Meeting with EAC in March

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

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I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill

028485

Karen Lynn-Dyson/EAC/GOV

02/28/2006 09:24 AM

To Adam Ambrogi/EAC/GOV@EAC, Eileen L.  
Collver/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC  
cc Raymundo Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

bcc

Subject Final meeting with Eagleton

As you know Eagleton is finishing up their project and would like to give us a final report on it.

Are your Commissioners and Tom available to meet on any of the following days from 1:00-2:30:

March 23

March 29

March 30

Thanks

Karen Lynn-Dyson

Research Manager

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

tel:202-566-3123

028486

Karen Lynn-Dyson/EAC/GOV

03/02/2006 02:04 PM

To Gracia Hillman/EAC/GOV@EAC

cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M.

bcc

Subject Re: Eagleton close-out meeting

Commissioner-

Given travels costs and the number of persons involved from the Eagleton/Moritz team, the idea was to do the two meetings in the same day.

However, I could ask Nicole to determine if there is a day in March that might work with your schedule.

I am very reluctant to schedule a meeting later in April as the contract is technically over March 31 (a Friday). April 3 is the following Monday.

Please advise. Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Gracia Hillman/EAC/GOV



Gracia Hillman/EAC/GOV

03/02/2006 01:57 PM

To klynn-dyson@eac.gov

cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

Subject Re: Eagleton close-out meeting

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

028487

Karen Lynn-Dyson/EAC/GOV

03/16/2006 09:57 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,  
bcc

Subject Fw: Voter ID Paper --Final Draft

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM —



"Tom O'neill"  
<tom\_oneill@verizon.net>  
03/15/2006 08:21 PM

To klynndyson@eac.gov  
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>,  
arapp@rci.rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, ireed@rutgers.edu,  
joharris@eden.rutgers.edu, john.weingart@rutgers.edu,  
rmandel@rci.rutgers.edu, "Johanna Dobrich"  
<jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu,  
foley.33@osu.edu, lauracw@columbus.rr.com

Subject Voter ID Paper --Final Draft

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to

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discuss them.

Tom O'Neill



ReportFinalDraft.doc

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# **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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## **1. Introduction and Report Background**

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

## **2. Voter Identification –Background and Approach of the Study**

Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The burden of providing required ID documents on the voter may be greater at the polls on Election Day than at the time of registration. The burden of checking ID, even as simple as a signature match, can be much greater on election workers at the polls than on those registering voters. Poll workers may be faced with long lines and limited time. This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>1</sup> The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

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<sup>1</sup> As the Carter-Baker Commission noted, photographic ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify identification. Commission on Federal Election Reform, pp 46-47.

## FINAL D R A F T

ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

This analysis takes a view of voter ID issues broader than the rather narrow identification requirements in HAVA. Much of the national ferment over voter ID goes beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those casting a ballot for the first time who had not registered in person. The controversy in the states over voter ID stems from the HAVA requirements, goes beyond those requirements, and sets the context for the analysis here.<sup>2</sup>

Identification is often described as the critical step in protecting the integrity of the ballot, the process that ensures that the potential voter is eligible and permitted to cast a ballot and one ballot only. In fact, ensuring ballot integrity requires a perspective that takes in the entire voting process. Protecting the integrity of the ballot requires more than preventing the ineligible from voting. It also should ensure that all those who are eligible and want to vote can cast a ballot that counts, and that they can effectively cast a ballot for the candidate of their choice. The protection effort must take into account all forms of voting, including absentee ballots, and embrace each step in the process. A voting system that establishes onerous requirements for voters to identify themselves may prevent the ineligible from voting, but it may also prevent the eligible from casting a ballot. If the ID requirements of a ballot protection system block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or forget to bring to the polls the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This analysis does not include consideration of the incidence of vote fraud, the forms that it takes, nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. The EAC has commissioned a separate study of vote fraud and instructed us not to address that issue in this research.

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<sup>2</sup> Harvard Law Review 119:1127. "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA. . . . HAVA makes explicit that it shall not 'be construed to prevent a State from establishing election technology and administration requirements that are more strict than' HAVA itself provides. The states have accepted the invitation. "

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## FINAL D R A F T

Nonetheless, a broad view of ballot integrity is needed to appreciate the background and context of this narrower study. We explore the inter-relationships between Voter ID requirements and Provisional Voting and estimate the effects of various voter id requirements on turnout and on the casting of provisional ballots.

Voters lacking required ID, or who have ID that does not reflect their current address, may be able to vote only by casting a provisional ballot.<sup>3</sup> To the extent that stricter voter ID requirements divert more voters to the provisional ballot, voter ID requirements can put stress on the already pressured management of the polling place. Administering provisional ballots is more expensive than the normal ballot. Scrutiny of ID can create lines at the polling places, lines made longer as voters are diverted to the provisional voting line. Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle that will keep more citizens from the polls. A review of voter identification practices should keep in mind that America's problem may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes will be more effective if based on clear standards –legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

- Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?
- How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>4</sup>
- How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity

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<sup>3</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>4</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

## FINAL D R A F T

that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>5</sup>

- How cost-effective is the system? Does it increase the security of the ballot at an affordable cost, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.
- If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>6</sup>
- Does it comply with the letter and spirit of Voting Rights Act?
- The seventh question is more difficult to measure than those described in the 6 questions outlined above. The Voter ID requirements should have a neutral result on the composition of the qualified electorate. That is, those requirements should not be designed to reduce the turnout of particular groups of voters who may have a propensity to support one party over another. Whatever the requirement may be, all citizens should be able to comply with it easily and at no or minimal cost.

### Summary of findings and conclusions

Voter turnout at the state level in 2004 declined where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Including other factors beyond voter id requirements diminishes the influence of voter ID on turnout. But the analysis still offers some support for the hypothesis that as the burden of voter identification

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<sup>5</sup> In New York, in 2004, disparities in training and voting information were made all too apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>6</sup> For example, the Carter-Baker Commission accompanied its recommendation for a national voter ID card with a recommendations for an affirmative effort by the states to reach out and register the unregistered, to use the new Voter ID regime as a means to enroll more voters.

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requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>7</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

### Recommendations for consideration and action by the EAC

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice that before states adopt a change described as increasing ballot security, states should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. The data should be analyzed to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent and should describe the dynamics of voter ID in preserving the security of the ballot?

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<sup>7</sup> Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject

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- Useful information could be supplied by exit polling. It would identify those who had cast a provisional ballot and ask why they were unable to cast a regular ballot. Answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
- Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter id requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three criteria: the convenience of the voter, the total time allowed to evaluate ballots<sup>8</sup>, and the safe harbor provision in presidential elections.

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<sup>8</sup> Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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**3. Voter ID and Turnout**

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility.

**TABLE 1 -- Voter ID Requirements**

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later

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New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Match Sig.	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID*****	Provide ID	Bring ID Later
Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

\*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

\*\*State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

\*\*\*Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

\*\*\*\*Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

\*\*\*\*\*Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

\*\*\*\*\*Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

In 9 states, voters were required merely to state their names so that poll workers could locate them in the registration book. In 14 states, voters signed their names. In 8 states, voters' signatures were matched with a specimen signature. In 15 states voters had to show some form of ID, not necessarily an official picture ID. And in 5 states, voters were required to show an official photo ID, although in 2004 voters who lacked a picture ID could execute an affidavit and vote a regular ballot.

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This neat assignment of each state to one of a few categories may fail to reflect actual practice at a polling place. Like any system run by fallible people it is subject to wide variation in practice. Voters may be confronted with demands for identification at variance with state statutes or legislation. Other voters may be waved through the process without a look at any document, no matter what the regulations may say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters may encounter.

It is not practical to attempt to capture the wide variety of how voter ID requirements may be actually implemented across the nation's tens of thousands of polling places. Recognizing that means that the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

### Effect of Voter ID requirements on Turnout

#### Summary of Findings and Conclusions

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau.<sup>9</sup>

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each

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<sup>9</sup> See Appendix \_\_\_\_ for the full report on voter ID and turnout.

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level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

### Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. a form of identification, and providing a form of photo identification.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

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Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	63.1 %	State Name	61.3 %
Sign Name	58.6 %	Sign Name	60.4 %
Match Signature	62.1 %	Match Signature	59.2 %
Provide Non-Photo ID	57.8 %	Provide Non-Photo ID	57.6 %
Provide Photo ID	57.3 %	Swear Affidavit	58.7 %
Average Turnout (All States)	59.6 %		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors an place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground for president, governor or senate voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-

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Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line.

In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. (Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting.) Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age in years, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note

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that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

### Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

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- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.
- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

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effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

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#### 4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*,

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Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

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suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

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### 5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

#### State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

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HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

### 6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.<sup>10</sup> The dynamics of Voter ID requirements—how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That research might address that, so far as may be

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<sup>10</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." The exclusion of voters through restrictive ID requirements could affect election outcomes as much as fraud by voters at the polls. *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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necessary to reduce vote fraud, could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended by our colleague Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.<sup>11</sup>

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<sup>11</sup> "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. These electronic photos should satisfy the anti-fraud concerns of conservatives as much as printed photos that citizens would be required to bring to the polls. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier."

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## Appendices

- a. Summary of case law on Voter ID issues (included with this draft)
- b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
- c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
- d. Compendium of states' legislation, procedures, and litigation

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### APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

#### Court Decisions

##### Summary of Relevant Cases:

##### Challenges Prevailed:

###### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

###### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

##### Challenges Rejected:

###### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

###### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

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- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

### *McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

### *Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

### *Perez v. Rhiddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

### **Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

#### ***American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).***

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

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between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

### ***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

### **Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

#### ***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

#### ***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

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provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

### ***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

### ***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

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several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

### **Current Litigation Concerning Voter ID Issues<sup>12</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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<sup>12</sup> As of January 2, 2006

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### Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>13</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>14</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

### Indiana (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

<sup>13</sup> Litigation documents are available at the Election Law @ Moritz website.  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>14</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>15</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>15</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

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### APPENDIX

#### Annotated Bibliography on Voter Identification Issues

##### Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

##### Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

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- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

### **Marginally relevant/limited discussion of Voter ID issues**

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
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- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
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  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
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028527

Appendix

028528



"Daniel Tokaji"  
<tokaji.1@osu.edu>  
03/17/2006 01:51 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: Martinez ELJ Submission

Will do. I didn't have time to review the final version before it went to you guys, but will do so. The last one I read was an improvement over prior drafts.

Daniel P. Tokaji  
Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
614.292.6566  
<http://moritzlaw.osu.edu/blogs/tokaji/>

---

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Friday, March 17, 2006 12:05 PM  
**To:** tokaji.1@osu.edu  
**Subject:** RE: Martinez ELJ Submission

Dan:

Also, I know we talked about this before, but I just received a draft of the Eagleton ID Provision piece. If you have comments or follow-up, pls let me know...

Thanks.

Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Daniel Tokaji" <tokaji.1@osu.edu>

03/17/2006 11:21 AM

To aambrogi@eac.gov  
cc  
Subject RE: Martinez ELJ Submission

028529



"Daniel Tokaji"  
<tokaji.1@osu.edu>  
03/17/2006 01:51 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: Martinez ELJ Submission

Will do. I didn't have time to review the final version before it went to you guys, but will do so. The last one I read was an improvement over prior drafts.

Daniel P. Tokaji  
Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
614.292.6566  
<http://moritzlaw.osu.edu/blogs/tokaji/>

---

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Friday, March 17, 2006 12:05 PM  
**To:** tokaji.1@osu.edu  
**Subject:** RE: Martinez ELJ Submission

Dan:

Also, I know we talked about this before, but I just received a draft of the Eagleton ID Provision piece. If you have comments or follow-up, pls let me know...

Thanks.

Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105


"Daniel Tokaji" <tokaji.1@osu.edu>

03/17/2006 11:21 AM

To aambrogi@eac.gov  
cc  
Subject RE: Martinez ELJ Submission

028530

Karen Lynn-Dyson/EAC/GOV  
03/22/2006 06:04 PM

To Bert A. Benavides/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Brian  
bcc  
Subject 

All-

About a week ago you received a copy of the Eagleton draft report on Voter Identification. As you know, Eagleton will be coming to EAC on April 3 to do a project close-out meeting with the agency.

Should you have comments or edits that you would like me to pass along to Eagleton, regarding their draft report on Voter ID, please get them to me by **COB Friday, March 24**. so that I may pass them along to Eagleton for inclusion in their final document.

Thank you

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028531



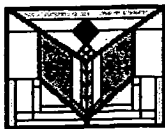


Laiza N. Otero/EAC/GOV  
03/27/2006 01:25 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Data Collection.

Thank you for the information. I shall include in my list of discussion topics for the small group sessions with the election officials.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202) 566-1707  
Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV  
03/27/2006 12:10 PM

To Laiza N. Otero/EAC/GOV@EAC  
cc  
Subject Data Collection.

hey-- an idea...

From Eagleton ID report[below]... perhaps something to discuss for addition in the Data collection project-- asking pollworkers to keep the numbers of those people turned away for lack of eligibility....


Would be helpful.  
Adam

...States should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028532

Karen Lynn-Dyson/EAC/GOV  
03/27/2006 03:08 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Question 

Had planning on integrating all of the Commissioner's comments through Wednesday and passing them on to Eagleton.

As you know Commissioners will meet with Eagleton next Monday. Depending on the feedback I may bring up the report on Thursday.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028533

Karen Lynn-Dyson/EAC/GOV

03/31/2006 03:09 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, Thomas R.  
cc Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,  
bcc

Subject Fw: Revised Voter ID Paper

See below. A revised version of the Eagleton paper to be discussed at Monday's meeting.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/31/2006 02:03 PM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
03/31/2006 08:42 AM

To klynndyson@eac.gov  
cc

Subject Revised Voter ID Paper

Karen,

Attached is a new draft of the Voter ID paper, revised to take into account the comments you gave us on Tuesday as well as some points raised recently by other reviewers. We'll be bringing hard copies of this draft with us to Monday's briefing. If you could distribute the new "Executive Summary" (pages 1 – 5) in advance to those who will take part in the meeting on Monday, I think the discussion would be improved.

Our train is scheduled to get into Union Station at 10:30 on Monday. Barring Amtrak delays, we should arrive at your offices shortly before 11.

Tom O'Neill



VoterIDReport0330.doc

028534

# FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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## Report Background

This report to the United States Election Assistance Commission (EAC) presents an analysis of voter identification requirements across the country and makes recommendations for best practices to improve implementation of voter ID requirements at the polls. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

## Executive Summary

### Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. The five categories are progressively more rigorous based on the demands they make on both voters<sup>1</sup> (and, to some extent) on election workers. The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample,

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<sup>1</sup> Even the most relaxed provisions for identification at the polls — anything stricter than the honor system used in North Dakota — will impose some burden on particular voters. *Harvard Law Review* 119:1146

## FINAL D R A F T

which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents are not uniformly and conveniently available to all voters.

We collected data on turnout in all counties to permit an estimate of the relationship between the rigor of the ID requirements and the level of turnout. This aggregate analysis is useful, but does not provide valid estimates on the effects of different kinds of ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates.) To allow that analysis, we used the Census Bureau's Current Population Survey from November 2004, which asked a large sample of Americans about their experience in the election. It has the disadvantage of relying on self reports by respondents about their registration status, citizenship, and experience in the polling place, but it provides the demographic data needed to supplement the aggregate analysis.

To understand the legal issues raised by voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints to policies on voter ID requirements.

### Findings

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.

Voter turnout at the state level in 2004 was lower in states where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required

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voters to state their names, compared to 57.3 percent in states that required photo identification. Those figures, however, probably overstate the effect since the inclusion of other factors beyond voter ID requirements in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of the other factors, the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents orf people living below the poverty line.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>2</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the

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<sup>2</sup> Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

## FINAL D R A F T

ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

### Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous Voter ID requirements affect the decision by potential voters to go or stay away from the polls-- are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice the publication of a “Voting Impact Statement” by states considering changing their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should analyze this publish an analysis of this information to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. The states should also be encouraged to use this information to increase the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
  - Useful information could be supplied by exit polling or surveys of voters by local election officials. It would make clear why those who cast a provisional ballot

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were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.

- Polling to ask voters what they know about the voter ID requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>3</sup>, and the safe harbor provision in presidential elections.
- Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

### **Background and Approach of the Study**

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The stress on voters to provide required ID documents may be greater at the polls on Election Day than when registering. The pressures arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may be faced with long lines and limited time.

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<sup>3</sup> Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.



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This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>4</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures on voter ID goes ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. The controversy in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>5</sup>

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>6</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

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<sup>4</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

<sup>5</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

<sup>6</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>7</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>8</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the

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<sup>7</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>8</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

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polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes can be more effective if based on clear standards –legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>9</sup>
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>10</sup>
3. How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>11</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>12</sup> A thorough, objective

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<sup>9</sup> "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

<sup>10</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>11</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>12</sup> "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at

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impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>13</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another. Whatever the requirement may be, can all citizens comply with it easily and at no or minimal cost?

### **Voter ID and Turnout**

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

This neat assignment in the following table and map of each state to one category no doubt fails to reflect actual practice at many polling places. Like any system run by fallible people, the voter ID process is subject to wide variation in practice. Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Some voters may be waved through the process without a look at any document, no matter what the regulations say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters actually encounter.

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administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

<sup>13</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen Hasen's has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

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**TABLE 1 -- Voter ID Requirements**

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID^	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID*****	Provide ID	Bring ID Later

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Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

\*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

\*\*State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

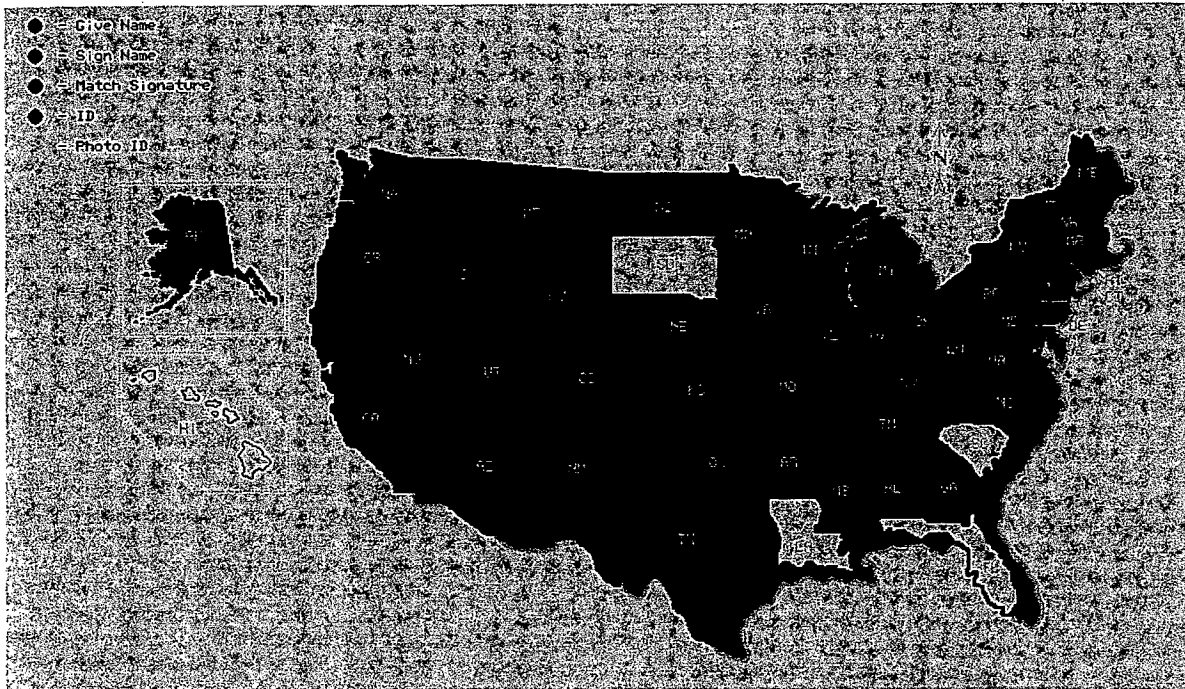
\*\*\*Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

\*\*\*\*Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

\*\*\*\*\*Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

\*\*\*\*\*Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

**Figure 1**



**Voter ID Requirements 2004**

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Since it is not practical to attempt to capture the wide variety of how voter ID requirements are actually implemented across the nation's tens of thousands of polling places, the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

### Effect of Voter ID requirements on Turnout

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau.<sup>14</sup>

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

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<sup>14</sup> See Appendix \_\_\_ for the full report on voter ID and turnout.

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### Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit is regarded as the most rigorous.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

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**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	63.1 %	State Name	61.3 %
Sign Name	58.6 %	Sign Name	60.4 %
Match Signature	62.1 %	Match Signature	59.2 %
Provide Non-Photo ID	57.8 %	Provide Non-Photo ID	57.6 %
Provide Photo ID	57.3 %	Swear Affidavit	58.7 %
Average Turnout (All States)	59.6 %		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors can place the effects of voter identification in a more accurate context. The multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line. In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. The decline in turnout is particularly noticeable in counties with concentrations of Hispanic residents or individuals who live below the poverty line. Determining if the reduction in turnout is, in fact, among the Hispanic or poor residents of those counties requires further research at the individual level.

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Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

### Discussion and Conclusions of the Analysis

The results give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

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- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the self-reports of elderly voters, while indicating that they would be slightly less likely to vote as ID requirements become stricter, do not show a dramatic effect.

The data examined in this analysis could not capture the dynamics of how identification requirements lower turnout. Do know the voter ID and stay away from the polls because they cannot or do not want to meet them? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

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### Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*,

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Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

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suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

### Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

### State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

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HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

### 6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.<sup>15</sup>

The dynamics of Voter ID requirements—how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in

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<sup>15</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.<sup>16</sup>

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<sup>16</sup> "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

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### **Appendices**

- a. Summary of case law on Voter ID issues (included with this draft)
- b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
- c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
- d. Compendium of states' legislation, procedures, and litigation

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## APPENDIX – Court Decisions and Literature on Voter Identification and Related Issues

### Court Decisions

#### Summary of Relevant Cases:

#### Challenges Prevailed:

##### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

##### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

#### Challenges Rejected:

##### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

##### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

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- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

### *McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

### *Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

### *Perez v. Riddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

### **Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

#### ***American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).***

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

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between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

### ***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

### **Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

#### ***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

#### ***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

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provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

### ***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

### ***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

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several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

### ***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

### ***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

### **Current Litigation Concerning Voter ID Issues<sup>17</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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<sup>17</sup> As of January 2, 2006

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### Georgia (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>18</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>19</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

### Indiana (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

<sup>18</sup> Litigation documents are available at the Election Law @ Moritz website.

<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>19</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>20</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>20</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

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## APPENDIX

### Annotated Bibliography on Voter Identification Issues

#### Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

#### Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

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## FINAL D R A F T

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

### **Marginally relevant/limited discussion of Voter ID issues**

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
  - History of voting and requirements
  - Theory

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028572

Appendix

028573

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

04/25/2006 10:28 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi

cc

bcc

Subject Re: BoA and Standards Board agendas 

History:

 This message has been replied to.

I have taken a look at the agendas. My questions start with assignment as resource person. Is Peggy going to be present for the Vote Fraud and Intimidation presentation? I have not been the person refereeing between Job and Tova, nor am I up to date on what their findings and work are. If I am just there to support the meeting, that's great, but Peggy should be there to make any substantive comments. I suffer from a similar problem with regard to the Eagleton presentation (other than what I gathered from their presentation a few weeks ago).

Perhaps what I need to know is what is the "resource person" supposed to do?

As a second question, do we know whether this lunch on Tuesday is "set". The hotel contract will have to be amended to include this lunch. I don't want to move forward on setting that up if it is not approved by the two Boards or it is otherwise not going to occur.

Third issue is that last time the Standards Board wanted a parliamentarian -- not volunteering, but that should be considered in terms of how our staff is assigned.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Amie J. Sherrill/EAC/GOV

Amie J. Sherrill/EAC/GOV

04/25/2006 03:45 PM

To jthompson@eac.gov@EAC, Karen Lynn-Dyson/EAC/GOV

cc

Subject BoA agenda



May 2006 Board of Advisors Agenda.doc  
Amie J. Sherrill  
Special Assistant to Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

028574



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## MEMORANDUM

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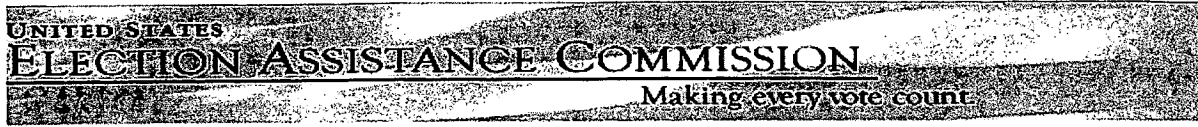
**TO:** MEMBERS OF EAC BOARD OF ADVISORS  
**FROM:** BEVERLY KAUFMAN, CHAIR  
PAUL DEGREGORIO, EAC COMMISSIONER  
**DATE:** APRIL 24, 2006  
**SUBJECT:** UPCOMING MEETING OF BOARD OF ADVISORS, MAY 23-24, 2006

**The next meeting of the EAC Board of Advisors (to be held jointly with the EAC Standards Board) will be held in Washington, D.C. on Tuesday, May 23 and Wednesday, May 24, 2006 at the Hamilton Crown Plaza hotel.** We hope you will be able to attend this important meeting, which will focus on consideration and discussion of a number of ongoing election administration research projects currently underway by the EAC. Additionally, there will also be a discussion regarding recent work conducted by the National Institute of Standards and Technology (NIST) regarding voter verifiable audit trail. (Please see the draft agenda attached for additional information.)

As was the case with our previous meetings of the EAC Board of Advisors, the EAC will pay the cost of travel, hotel and a Federal per diem for any member of the Board of Advisors wishing to attend the May 2006 meeting. Our travel agent, Adventure Travel, will be contacting you with further information regarding travel and lodging arrangements. If you have any questions, please contact Amie Sherrill of the Election Assistance Commission. She may be reached at (202) 566-3100 (email address is [asherrill@eac.gov](mailto:asherrill@eac.gov)).

Thank you in advance for your willingness to join us in Washington, D.C. We look forward to seeing you soon.

028575



**U.S. ELECTION ASSISTANCE COMMISSION  
Board of Advisors Meeting Agenda  
Washington, D.C.  
May 23 – 24, 2006**

**Tuesday, May 23, 2006**

**Noon – 1:15 P.M. LUNCHEON**

**Brief Welcoming Remarks**  
Chairman Paul DeGregorio

**EAC Staff Presentations:**

- Katrina Voting Assistance Relief* (Edgardo Cortes);
- Public Access Portals* (Edgardo Cortes);
- Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins);
- Design for Democracy* (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson)

***NOTE: The EAC Standards Board will be meeting simultaneously.***

**1:15 – 1:30 P.M. BREAK**

**1:30 – 2:30 P.M. BOARD OF ADVISORS PLENARY SESSION**  
Session Chaired by Beverly Kaufman, Chair

- Appointment of Parliamentarian
- Call of Roll and Appointment of Proxy Committee
- Appointment of Resolutions Committee
- Review of Meeting Book Materials
- Report of Proxy Committee to establish voting strength
- Adoption of Agenda
- Adoption of Minutes of August 2005 Meeting

028576

**2:30 – 4:00 P.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)**

Presenters:  
Jennifer Collins-Foley, EAC Consultant  
Dora Rose, Center for Election Integrity, Cleveland State University  
Resource Person: Karen Lynn-Dyson, EAC

**4:00 – 4:15 P.M. BREAK**

**4:15 – 5:30 P.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON VOTE COUNT/RECOUNT**

Presenters:  
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah  
Doug Chapin, EAC Consultant  
Resource Person: Julie Thompson-Hodgkins, EAC

*NOTE: Attendees on their own for dinner.*

Wednesday, May 24, 2006

**8:00 – 8:30 A.M. CONTINENTAL BREAKFAST**

**8:30 – 9:15 A.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON PROVISIONAL VOTING**

Presenters:  
Thomas O'Neil: Project Manager, EAC Provisional Voting  
Edward Foley: Director, Election Law@Moritz (The Ohio State University)  
Resource Person: Julie Thompson-Hodgkins, EAC

**9:15 – 10:00 A.M. BRIEFING ON PROPOSED MANAGEMENT GUIDELINES**

Presenters:  
Connie Schmidt, EAC Consultant  
Brit Williams, EAC Consultant  
Resource Person: Brian Hancock, EAC

**10:00 – 10:15 A.M. BREAK**

**10:30 – 11:00 A.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON VOTER FRAUD/VOTER INTIMIDATION**

Presenters:  
Job Serebrov, Associate, The Nixon Law Firm

028577

Tova Wang, Democracy Fellow, The Century Foundation  
Resource Person: Juliet Thompson-Hodgkins, EAC

**11:00 – 11:55 A.M. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON VOTER IDENTIFICATION**

Presenters:  
Thomas O'Neil: Project Manager, EAC Voter I.D. Study  
Edward Foley, Director, Election Law@Moritz, The Ohio State  
University  
Resource Person: Juliet Thompson-Hodgkins, EAC

**NOON – 1:30 P.M. EAC Activities Update**

Brief Remarks by: Chairman Paul DeGregorio  
Commissioner Gracia Hillman

**Presentation: General Update on NIST/TGDC Activities**

Introduction of Speakers: Commissioner Donetta Davidson

Presenters:  
John Wack, NIST

**1:40 – 2:45 P.M. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON IMPROVING DATA COLLECTION**

Presenters:  
Karen Lynn-Dyson, Research Director, EAC  
Laiza Otero, Research Associate, EAC  
Resource Person: Brian Hancock, EAC

**2:45 – 3:00 P.M. BREAK**

**3:00 – 5:00 P.M. BOARD OF ADVISORS PLENARY SESSION**

Session Chaired by Beverly Kaufman, Chair

- Election of Officers
- Report of Resolutions Committee  
Chaired by Vice Chairman Chris Thomas
- Other Business

**5:00 P.M.**

**ADJOURN**

028578



Margaret Sims /EAC/GOV  
05/04/2006 02:07 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ddavidson@eac.gov, ghillman@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.  
Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,  
Adam Ambrogi/EAC/GOV@EAC, Eileen L.  
bcc

Subject Voting Fraud-Voter Intimidation Working Group Meeting

Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims  
Election Research Specialist

028570

Margaret Sims /EAC/GOV  
05/09/2006 02:48 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Working Group-Perez

Adam:

J.R. Perez's resume is attached, and I have forwarded my last explanatory email to Job in answer to his concerns. I will tell Tova not to contact Ray, but that she may talk with you about this issue. Thanks! ---  
Peggy



Perez bio 5\_5\_06.doc

— Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 02:45 PM —

Margaret Sims /EAC/GOV  
05/09/2006 11:13 AM

To "Job Serebrov"  
<serebrov@sbcglobal.net>@GSAEXTERNAL  
cc wang@tcf.org  
Subject Re: Working Group-Perez 

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Records, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from

028588

San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy



tx elec admin-appt-partisan restrictions.doc

"Job Serebrov" <serebrov@sbcglobal.net>



"Job Serebrov"  
<serebrov@sbcglobal.net>

05/08/2006 11:30 PM

To psims@eac.gov

cc

Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

028581

J. R. Perez  
Guadalupe County Elections Administrator  
307 West Court  
Seguin, Texas 78155  
Business 830-303-6363  
E-Mail JRPerez50@sbcglobal.net  
Website: www.Guadalupe-Elections.com

Education:

The University of Texas at Austin  
Bachelor of Business Administration

Office Held:

Appointed Guadalupe County Elections Administrator, January 1993.

Credits:

**Certified Elections / Registration Administrator**; August 26, 1998. The Election Center;  
Professional Education Program.

**Elected President of the Texas Association of Elections Administrators, 1997-1998.**

**Legislative Chairman for Texas Association of Elections Administrators, 1998-1999**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for  
Presentation Made During the Thirteenth Annual Election Law Seminar.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for  
"Training Your Judges" Presentation Made During the Fourteenth Annual Election Law Seminar.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for  
"Creating Your Own Website:" Presentation Made During the Fifteenth Annual Election Law  
Seminar.**

**Received Certificate of Award, Professional Practices Paper, Elections Center Conference,  
Boston.**

**Received Certificate of Award, Iacreat Website: Contest, Recognition of Excellence in Category I  
for Website:**

**Appointed to the Secretary of State's Advisory Panel for the Texas Voter Registration System.  
(TEAM)**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for the "  
Website:" presentation made during the Eighteenth Annual Election Law Seminar.**

**Received Certificate of Award, Professional Practices Paper, Elections Center Conference,  
Beverly Hills.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division  
for presentation made during the Twenty First Annual Election Law Seminar.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division  
for presentation made during the Twenty Third Annual Election Law Seminar.**

**Participated in the U. S. Election Assistance Commission Meeting on improving the collection of  
Election Data.**

028582

Margaret Sims /EAC/GOV  
05/09/2006 02:51 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc Adam Ambrogi/EAC/GOV@EAC  
bcc  
Subject RE: Working Group-Perez

We are still on for 4 PM. Ray is out of the office due to a family emergency, so I suggest you NOT contact him. You may contact his Special Assistant, Adam Ambrogi (aambrogi@eac.gov or 202-566-3105), who also hails from Texas. --- Peggy

"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>  
05/09/2006 12:08 PM

To psims@eac.gov, serebrov@sbcglobal.net  
cc  
Subject RE: Working Group-Perez

We are still doing the 4 pm call, right? We can discuss it more then. Would it be OK if I see if Ray knows this person? Thanks. Tova

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

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Tuesday, May 09, 2006 10:14 AM  
**To:** serebrov@sbcglobal.net  
**Cc:** wang@tcf.org  
**Subject:** Re: Working Group-Perez

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

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028583

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-- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

05/08/2006 11:30 PM

To psims@eac.gov

cc

Subject Re: Working Group

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Job

028584

Margaret Sims /EAC/GOV  
05/09/2006 03:38 PM

To: Adam Ambrogi/EAC/GOV@EAC  
cc: Amie J. Sherrill/EAC/GOV@EAC, Brian  
Hancock/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC, Karen  
bcc  
Subject: Re: Materials for Standards Board (DRAFT) 

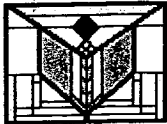
Adam:

Regarding the **Vote Count/Recount** contract, I am trying to schedule a teleconference with Thad for tomorrow. We will discuss preparations for his presentation, among other things. He may suggest additional materials, other than the testimony, that may be acceptable to us.

Regarding the **Vote Fraud/Voter Intimidation** project, I don't think the materials will include a written recap of the Working Group meeting, scheduled for May 18, if we have to have the materials to you NLT COB May 17. I can provide a verbal recap at the meeting. I may be able to pull together a written recap after May 18, but it won't be available much earlier than the week of the meetings.

Let me know if you have any questions. --- Peggy

Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV  
05/09/2006 12:15 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo  
Cortes/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC,  
Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC  
cc: Amie J. Sherrill/EAC/GOV@EAC  
Subject: Materials for Standards Board (DRAFT)

Attached, please find draft letter to be sent to the Commissioners. Any comments or corrections, please make them and send them back to Amie and myself. We hope to send this email by 3 PM today, so please take a look quickly-- for your projects.

Commissioners:

Peggy, Edgardo, Karen, Laiza, Adam and Amie met this afternoon to discuss what materials will be ready to present to the Standards Board and Board of Advisors members during the meetings later this month. Listed below is what we have determined to be available for their review and feedback. Please review this list and offer your feedback.

Also, attached is an updated SB agenda with "comments" on work product for each project to be discussed.

Design for Democracy - exhibits to be on display for board member review and feedback; Ric Grefe will be present with KLD to discuss the processes used to get to these specific examples; Preliminary Design Report (dated April 10, 2006) to be delivered electronically to the members for their review prior to the meeting

028585

Legal Information Clearinghouse - demo version of the website will be available to show

Public Access Portals - there is a conference scheduled for June 16-18; a tentative agenda and, if desired, a list of participants will be made available to the members for their review and feedback; also future steps can also be outlined for their feedback

Katrina Voting Assistance Relief - due to the limited amount of information that we can offer, we propose eliminating this topic and substituting discussions on our Language Working Group meetings

Language Working Groups - the members will be updated on our two working group meetings and the information received at both, as well as our next steps

Provisional Voting - a draft of the final report is to be delivered to the 4 C's by 5/11 for their review and feedback; product following 4C review will be available 5/17 for electronic distribution to board members

Poll Worker R T & R (including College Pollworker) - reports as they stand now are not ready to be presented, according to the KLD; Peggy and Karen to communicate to project managers the need for a report by 5/11 for review by the 4 C's

Proposed Management Guidelines - Connie, Brit, and Brian to determine on 5/10 what materials are ready for presentation to board members; currently a 3 page overview briefing of guideline principles and a 20 page chapter on security principles have been prepared

Vote Count/Recount - materials to be delivered to board members include the public testimony given by Thad Hall and Doug Chapin at our Seattle public meeting and several case studies outlining examples

EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to be presented (Ready).

Voting Fraud/Voter Intimidation - a summary of the preliminary research and a recap of the discussions of the May 18 working group meeting offering brainstorming ideas, not advice

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.



Research Work Product AGENDA 2006.doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028336



**U.S. ELECTION ASSISTANCE COMMISSION**  
**Standards Board Meeting Agenda**  
**Washington, D.C.**  
**May 23 – 24, 2006**

**Tuesday, May 23, 2006**

**NOON – 1:15 P.M. LUNCHEON**

**Brief Welcoming Remarks**  
 Commissioner Ray Martinez III

**EAC Staff Presentations:**

- Design for Democracy* (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson);
- Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins);
- Public Access Portals* (Edgardo Cortes);
- [Deletion of Katrina Briefing— not enough information currently, replace with: ]Language Working Group Updates* (Edgardo Cortes).

**Comment [Aa1]:** KLD has initial materials— need to determine what materials should/could be provided to the SB— all materials aside from NVRA federal form will be reproduced and

**Comment [Aa2]:** EC and JT may have initial website to present/display for SB members at meeting— unlikely to have materials ready in advance.

**Comment [Aa3]:** Update only, no materials.

**Comment [Aa4]:** Update and timeline for translation into Asian languages, and

**1:15 – 1:30 P.M. BREAK**

**1:30 – 2:30 P.M. STANDARDS BOARD PLENARY SESSION**  
 Session Chaired by Peggy Nighswonger  
 Chair, Executive Board

- Appointment of Parliamentarian
- Adoption of Agenda
- Review of Meeting Book Materials
- Presentation of Proposed Permanent Bylaws
- Election of Executive Board Vacancy

**2:30 – 4:00 P.M. DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING**

Presenters:

**Comment [Aa5]:** Draft will be available for review by the 4C on the 17<sup>th</sup>. Do not expect additional versions produced prior to the SB meeting. Can be emailed in advance.

Thomas O'Neill: Provisional Voting/Voter Identification Study  
Edward Foley: Director, Election Law@Moritz (The Ohio State University)  
EAC Resource Person: Julie Thompson-Hodgkins

**4:00 – 4:15 P.M. BREAK**

**4:15 – 5:30 P.M. DISCUSSION: BRIEFING ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)**

Presenters:  
Jennifer Collins-Foley, Pollworker Institute  
Abby Horn, Cleveland State University  
EAC Resource Person: Karen Lynn-Dyson

**Comment [Aa6]:** Preliminary draft available for both College Pgm and Poll. According to KLD, drafts not appropriate to release at this time; she will contact K'ors to make sure that substantive materials will be ready on the 17<sup>th</sup>.

*NOTE: Attendees on their own for dinner.*

**Wednesday, May 24, 2006**

**8:00 – 8:30 A.M. CONTINENTAL BREAKFAST**

**8:30 – 9:15 A.M. BRIEFING: PROPOSED MANAGEMENT GUIDELINES**

Presenters:  
Connie Schmidt, EAC Consultant  
Brit Williams, EAC Consultant  
EAC Resource Person: Brian Hancock

**Comment [Aa7]:** CS, BW and BH to meet on Wednesday to determine what of their materials may be ready for distribution. Current potentials: 3 pg. overview briefing of guideline principals, and 20 pg. chapter on security principals.

**9:15 – 10:00 A.M. BRIEFING: DRAFT REPORT ON VOTE COUNT/RECOUNT**

Presenters:  
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah  
Doug Chapin, EAC Consultant  
EAC Resource Person: Peggy Sims

**Comment [Aa8]:** Draft report completed, but according to PS, too technical at this point, but able to be released – potentially the testimony from Seattle, as well as a summary of findings will be able to be released.

**10:00 – 10:15 A.M. BREAK**

**10:30 – 11:00 A.M. DISCUSSION: DRAFT EAC ELECTION DAY SURVEY**

Presenters:  
Karen Lynn-Dyson, Research Director, EAC  
Laiza Otero, Research Associate, EAC

**Comment [Aa9]:** EO and JT are currently in consultation regarding the form of the document. Will be ready in draft form for distribution immediately prior to SB meeting.

**11:00 – 11:55 P.M. BRIEFING: BRIEFING ON VOTING FRAUD/VOTER INTIMIDATION**

Presenters:  
Job Serebrov, Associate, The Nixon Law Firm

**Comment [Aa10]:** There is legal research prepared, but not compiled in a format that would be usable by SB members. Because of the close proximity to the working group meeting, final report is not yet written. Working Group Comments can be included.

Tova Wang, Democracy Fellow, The Century Foundation  
EAC Resource Person: Peggy Sims

**NOON – 1:30 P.M. JOINT LUNCHEON**

***EAC Activities Update***

Brief Remarks by: Chairman Paul DeGregorio  
Vice-Chairman Ray Martinez III  
Commissioner Gracia Hillman

**Presentation:** **General Update on NIST/TGDC Activities**

Introduction of Speaker: Commissioner Donetta Davidson

Presenters:  
John Wack, NIST

**Comment [Aa11]:** Allan Eustice contacted; says he will provide the EAC with materials and a speaking agenda ASAP.

**1:40 – 2:45 P.M.**

**DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION**

Presenters:  
Thomas O'Neill, Provisional Voting/Voter Identification Study  
Edward Foley, Director, Election Law@Moritz, The Ohio State University  
EAC Resource Person: Julie Thompson-Hodgkins

**Comment [Aa12]:** Conference call of peer review group on 11<sup>th</sup>; final Draft available on the 15<sup>th</sup>. Can be reviewed by the Commissioners, and then be emailed in advance.

**2:45 – 3:00 P.M.**

**BREAK**

**3:00 – 5:00 P.M.**

**STANDARDS BOARD PLENARY SESSION**

Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

**5:00 P.M.**

**ADJOURN**

Margaret Sims /EAC/GOV  
05/17/2006 01:01 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC

cc

bcc

Subject Handouts for Board Meetings

Adam and Amie:

Attached are the status report on the Voting Fraud-Voter Intimidation research project and two versions of the PowerPoint presentation from our Vote Count/Recount contractor (one with the first slide labeled for the EAC Standards Board; the other with the first slide labeled for the Board of Advisors). --- Peggy



EAC Boards VF-VI Status Report.doc Best Practices STANDARDS.ppt Best Practices Advisors.ppt

028590



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

**028591**

## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

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## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,



although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people – including representatives from the Department of Justice (DOJ) - indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While DOJ's Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance, the Election Crimes Branch, Public Integrity Section, has increased prosecutions of individual instances of felon, alien, and double voting at the same time as it maintains an aggressive pursuit of systematic schemes to corrupt the electoral process.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.

- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **NEWS ARTICLES**

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

### **Absentee Ballots**

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

028597

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

028599

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law  
Leader of Election Protection Coalition  
*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC  
National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice


*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice



Karen Lynn-Dyson/EAC/GOV  
05/17/2006 05:17 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC  
bcc  
Subject RE: Presentations at the EAC Governing Boards 

I am told that a Wordperfect copy of the Provisional document will be fine.

EAC staff will convert it to a PDF file. Please sent the final drafts of the reports ASAP.

Also, you are correct to note the changes in the time allotments Please divide the time among your staff as you deem appropriate.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/17/2006 04:57 PM

To klynndyson@eac.gov  
cc tokaji.1@osu.edu, john.weingart@rutgers.edu,  
foley.33@osu.edu  
Subject RE: Presentations at the EAC Governing Boards

Karen, I don't have the capacity to produce a PDF copy of the report. (I thought we discussed this last week and you agreed that the word document would suffice.) Someone at Eagleton could surely covert the DOC file to PDF, but since I just read your email now (4:50), we could not provide a PDF copy today. Please let me know if you want me to pursue this tomorrow.

Thanks for the schedule below. But it raises a question. Earlier this week you told me that the Commissioners asked that we limit our presentation to 10 minutes and leave the rest of the time for questions and comments. As I noted in my response, condensing our reports to 10 minutes poses a challenge. Is the 10 minute limit no longer operative?

Tom O'Neill

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]  
**Sent:** Wednesday, May 17, 2006 12:30 PM  
**To:** tom\_oneill@verizon.net  
**Cc:** asherrill@eac.gov; aambrogi@eac.gov; jthompsonhodgkins@eac.gov  
**Subject:** Re:Presentations at the EAC Governing Boards

028603

Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

**EAC Standards Board ( 137 members)**

**Tuesday, May 23, 2006**

**2:30-4:00 PM**

**Hamilton Ballroom**

Provisional Voting

45 minutes for presentation

45 minutes for questions and answers

**Wednesday, May 24, 2006**

**1:40-2:45 PM**

**Hamilton Ballroom**

Voter Identification

40 minutes for presentation

25 minutes for questions and answers

**EAC Board of Advisors ( 36 members)**

**Wednesday, May 24, 2006**

**8:30-9:15 AM**

**Lafayette Park Ballroom**

Provisional Voting

20 minutes for presentation

25 minutes questions and answers

**Wednesday, May 24, 2006**

**11:00-11:55 PM**

**Lafayette Ballroom**

Voter Identification

30 minutes presentation

25 minutes questions and answers

**EAC General Counsel Julie Thompson - Hodgkins will facilitate /moderate all of your sessions**

Will be in touch tomorrow after the Commissioners have met.

028604

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028605

Karen Lynn-Dyson/EAC/GOV

05/17/2006 05:32 PM

To Adam Ambrogio/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC

cc

bcc

Subject Fw: PV Final Draft for Review by Advisory and Standards Boards

Here is the report to be included

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 05/17/2006 05:31 PM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/12/2006 04:51 PM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu,  
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Subject PV Final Draft for Review by Advisory and Standards Boards

Karen,

Attached is the Final Draft of our report on Provisional Voting for review by the Advisory Board and the Standards Board. I understand from our conversation earlier today that it will be reviewed by the Commissioners at their meeting next week, and, if approved by them, distributed to the boards in advance of their meetings on May 23 and 24. This report will form the basis of our PowerPoint briefing for the boards at those meetings. I will not have hard copies of those PowerPoint presentations for distribution to the boards until the day of the meeting.

We intend to have the Final Draft Voter ID Report to you in time for review by the Commissioners at their second meeting next week.

Thanks for your guidance.

Tom O'Neill



PVFINALDRAFT0512.doc

028606

**Report to the**  
**U. S. Election Assistance Commission**  
**On**  
**Best Practices to Improve Provisional Voting**  
**Pursuant to the**  
**HELP AMERICA VOTE ACT OF 2002**  
**Public Law 107-252**

May 12, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

028607

**Deliberative Process  
Privilege**

**FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

**Report to the  
U. S. Election Assistance Commission**

**Best Practices to Improve Provisional Voting**

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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors  
**The Research Team**

This research report on Provisional Voting in the 2004 election is part of a broader analysis that also includes a study of Voter Identification Requirements, a report on which is forthcoming. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

## **Project Management Team**

Dr. Ruth B. Mandel  
Director, Eagleton Institute of Politics  
Board of Governors Professor of Politics  
Principal Investigator  
Chair of the Project Management Team

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Laura Williams  
The Moritz College of Law

## **FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

### **Peer Review Group**

R. Michael Alvarez  
Professor of Political Science  
California Institute of Technology

Timothy G. O'Rourke  
Dean, Fulton School of Liberal Arts  
Salisbury University

John C. Harrison  
Masse Professor of Law  
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Bradley Smith  
Professor of Law  
Capital University Law School

Martha E. Kropf  
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Tim Storey  
Program Principal  
National Conference of State Legislatures

Daniel H. Lowenstein  
Professor of Law, School of Law  
University of California at Los Angeles

Peter G. Verniero  
former Attorney General, State of New Jersey  
Counsel, Sills, Cummis, Epstein and Gross, PC

The Peer Review Group improved the quality of our work by critiquing drafts of our analysis, conclusions and recommendations. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in the policy recommendations of the report.



# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## EXECUTIVE SUMMARY

### Background and Methodology

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005.

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.<sup>1</sup> The process HAVA outlined left considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction (precinct or larger unit) the ballot must be cast in order to be counted.<sup>2</sup>

The general requirement for provisional voting is that, if a registered voter appears at a polling place to vote in an election for Federal office, but either the potential voter's name does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, that potential voter must be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the EAC's Election Day Survey, "first-time voters who registered by mail without identification and cannot provide identification, as required under HAVA. . ." <sup>3</sup> HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. Election administrators are required by HAVA to notify individuals of their opportunity to cast a provisional ballot.

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<sup>1</sup>The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See [www.electioncenter.org](http://www.electioncenter.org).

<sup>2</sup>The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6<sup>th</sup> Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

<sup>3</sup>The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.html>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004.)

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Our research began in late May 2005. It focused on six key questions raised by the EAC.

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.<sup>4</sup>
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

## KEY FINDINGS

### Variation among the states

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63%, were counted. Provisional ballots accounted for a little more than 1% of the final vote tally. These totals obscure the wide variation in provisional voting among the states.<sup>5</sup>

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<sup>4</sup> Attachment 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures. It also describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

<sup>5</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

028612

## FINAL DRAFT

For Review by the Standards Board and Board of Advisors

- Six states accounted for two-thirds of all the provisional ballots cast.<sup>6</sup>
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.
- States with voter registration databases counted, on average, 20% of the provisional ballots cast.
- States without databases counted ballots at more than twice that rate: 44%.<sup>7</sup>
- States that provided more time to evaluate provisional ballots counted a greater proportion of those ballots. Those that provided less than one week counted an average of 35.4% of their ballots, while states that permitted more than 2 weeks, counted 60.8%.

An important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>8</sup>

### Variation within states

Within states, too, there was little consistency among different jurisdictions. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot.

Resources available to administer provisional voting varied considerably among and within states. Differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.

---

<sup>6</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>7</sup> As the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without." Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

<sup>8</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be managed poorly. Provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

## **The lessons of litigation**

Successful legal challenges highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. Most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots. This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right --the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## **States move to improve their processes**

Shortly after the 2004 election, several states came to the conclusion that the administration of their provisional voting procedures needed to be improved, and they amended their statutes. The new legislation highlights areas of particular concern to states about their provisional voting process.

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.
- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices that draw on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

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For Review by the Standards Board and Board of Advisors

## SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

### Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

### Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendation section of this report could be helpful. Among those questions are:

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

### Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

### Assess each stage of the provisional voting process

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Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for best practices to avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Best practice would be for states should provide guidelines (as do Connecticut and Delaware) to estimate the supply of provisional ballots needed at each polling place.

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.
- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

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- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

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## Provisional Voting in 2004

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.

These totals obscure the wide variation in provisional voting among the states.<sup>9</sup> Six states accounted for two-thirds of all the provisional ballots cast.<sup>10</sup> State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted provisional ballots at more than twice that rate, 44%.

An important source of variation was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>11</sup>

- The percentage of the total vote cast as provisional ballots averaged more than 2% in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.<sup>12</sup>
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states had their ballots counted more frequently than those in the new states. This experience effect is evidence that there is room for improvement in provisional balloting procedures, especially in those states new to the process.<sup>13</sup> That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

<sup>9</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

<sup>10</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>11</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

<sup>12</sup> To compensate for the wide differences in vote turnout among the 50 states the average figures here are calculated as the mean of the percent cast or counted rather than from the raw numbers of ballots cast or counted.

<sup>13</sup> Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time limit to process provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from “new” states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC can facilitate the exchange of experience among the states and can offer all states information on more effective administration of provisional voting.

Concluding optimistically that experience will make all the difference, however, may be unwarranted. Only if the performance of the “new” states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Our current understanding of how provisional voting worked in 2004 is not sufficient to determine unambiguously which view is correct.

1. “New” states may have a political culture different from “old” states. That is, underlying features of the “new” states political system may be the reason they had not adopted some form of provisional voting before HAVA. The “new” states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. The training they offer poll workers about provisional ballots may not be as frequent or effective as in other states. If the inconsistent performance in the “new” states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.<sup>14</sup>
2. “Old” states may devote fewer resources to updating their registration files or databases because they consider provisional ballots as a reasonable fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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<sup>14</sup> Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, “no state gave the voter the right to find out the status of their ballot after the election. “ Now all offer that opportunity. See Bali and Silver, “The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000,” manuscript, Department of Political Science, Michigan State University. Resisting HAVA’s mandates through foot-dragging lacks any legitimate foundation in law or policy.

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- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit.<sup>15</sup>
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>16</sup> In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.<sup>17</sup>

<sup>15</sup> See Table 2 in Appendix 2 for information on the verification method used in each state.

<sup>16</sup> The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

<sup>17</sup> The Election Day Survey concluded that: "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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- In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
- If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.<sup>18</sup>
- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.<sup>19</sup>
  - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks<sup>20</sup>.
  - Those states that permitted less than one week counted an average of 35.4% of their ballots.
  - States that permitted between one and two weeks counted 47.1%.
  - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast<sup>21</sup>.
  - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

## Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors beyond statewide factors, such as verification requirements or the time provided for ballot evaluation, also influence the provisional voting process. Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."<sup>22</sup>

Election Line reported that:

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<sup>18</sup> This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

<sup>19</sup> See Appendix \_\_, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

<sup>20</sup> Many thanks to Ben Shepler, of the Moritz College of Law, for assembling complete data on the time requirements states permitted for the counting of provisional ballots.

<sup>21</sup> 43 states are included in this analysis, including Washington D.C. The 7 election-day registration states are omitted, as is Mississippi, which never provided data on provisional ballots. North Carolina is also omitted from the regressions, as it does not have a statewide policy on how it verifies provisional ballots.

<sup>22</sup> Recommendation 2.3.2 of the Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report also observed that, ". . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

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- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important in such districts. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

### **Effectiveness of Provisional Voting**

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. Information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not

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made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

***Estimates of Votes Lost In 2000 Presidential Election***

<b>Votes Lost (Millions)</b>	<b>Cause</b>
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

***Table 1 Cal Tech – MIT Voting Technology Project Estimates***

4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. In 2004, about 1.2 million provisional voters were counted. A rough estimate, then, of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)<sup>23</sup>. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

### **Legislative Response**

Indeed, several states<sup>24</sup> came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

<sup>23</sup> Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems. After each election the CPS asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

<sup>24</sup> Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

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Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.<sup>25</sup>

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

## Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right --the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to

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<sup>25</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots “very challenging and unrealistic. To overcome this challenge, the *entire department’s employees were mobilized to process provisional ballots.*” The report also found that in Los Angeles County, “staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots.” In a close, contested election, “duplicate” ballots would doubtless receive long and careful scrutiny.” See Appendix 7, GAO, “Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,” September 2005. (GAO Report-05-997)

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determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

## RECOMMENDATIONS

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use of provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have voted provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

### Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

### Self-evaluation of Provisional Voting –4 Key Questions

The first need to achieve greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

### Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

### The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result— well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."<sup>26</sup>

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.<sup>27</sup> Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.<sup>28</sup>

<sup>26</sup> The Century Foundation, *Balancing Access and Integrity*, Report of the Working Group on State Implementation of Election Reforms, July 2005.

<sup>27</sup> See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

<sup>28</sup> See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the

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- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.<sup>29</sup> Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers may need appropriate training to understand their duty to give such voters a provisional ballot.<sup>30</sup>

## A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."<sup>31</sup>
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.<sup>32</sup>
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

## B. At the Polling Place

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wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

<sup>29</sup> *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6<sup>th</sup> Cir. 2004)

<sup>30</sup> *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

<sup>31</sup> Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

<sup>32</sup> The Century Foundation, *op. cit.*

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Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>33</sup> Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>34</sup> A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>35</sup> At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>36</sup> States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

<sup>33</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>34</sup> 2005 N.M. Laws 270 page no. 4-5.

<sup>35</sup> Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

<sup>36</sup> Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

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### C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, “Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation.”<sup>37</sup> Nonetheless, the *Panio v. Sutherland*<sup>38</sup> decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is “clerical error” judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state’s ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.<sup>39</sup>
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.<sup>40</sup> While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the

<sup>37</sup> The Century Foundation, op. cit.

<sup>38</sup> 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

<sup>39</sup> In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c),(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

<sup>40</sup> See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, “Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions.”

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additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.<sup>41</sup> Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.<sup>42</sup>

### Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who

<sup>41</sup> Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

<sup>42</sup> 8 CCR 1505-1, at 26.5.4, adopted August 4, 2005. See also 1-2-509(3) C.R.S.

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registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.

RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

### **D. Verification of Provisional Ballots**

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

### **E. Post-election Information for Voters**

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### **F. State Laws Governing Litigation over Provisional Voting**

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

### **Broader Considerations**

#### **G. Integrity and the Appearance of Integrity**

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.

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2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

### H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma<sup>43</sup> or the Baldrige Quality process<sup>44</sup> to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
  - Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
  - Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
  - Measures of variance among jurisdictions.
  - Number of poll workers trained in administration of provisional voting by polling place
  - Number of jurisdictions posting information on provisional voting in the polling place
  - Time required to evaluate ballots by jurisdiction

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<sup>43</sup> Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process – from manufacturing to transactional and from product to service.

<sup>44</sup> The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

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Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

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## ATTACHMENT 1 – Data Sources for Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state's use of provisional ballots:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and included it in our analysis.

### New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting,<sup>45</sup> but condensed its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We included in the list of “Old States” all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they

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<sup>45</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.



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were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

<b>Table 1 CATEGORIZATION OF STATES -- Old and New</b>		
<b>Old States</b>	<b>New States</b>	<b>HAVA Exempt or NA</b>
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
<b>26</b>	<b>18</b>	<b>7</b>

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## Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>46</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

## Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois <sup>47</sup>	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

<sup>46</sup> "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

<sup>47</sup> In Illinois, it is not clear that all counties followed this procedure. Some counties may not have counted out-of-precinct ballots.

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## Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

<b>Signature Match</b>	<b>Data Match</b>	<b>Affidavit</b>	<b>Return with ID</b>	<b>NA</b>
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

<b>Table 4</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>48</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>49</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>50</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>48</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>49</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>50</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Data Differences

The data used in this study differ from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

<b>State</b>	<b>EDS Numbers Cast/Counted</b>	<b>Our Numbers Cast/Counted</b>	<b>Differences</b>	<b>Updated Info from State?<sup>51</sup></b>
<b>Alabama</b>	6,478/1,865	6560/1836	82/29	No
<b>Alaska</b>	23,285/22,498	23,275/22,498	10/0	No
<b>Colorado</b>	51,529/39,086	51,477/39,163	52/77	No
<b>Georgia</b>	12,893/4,489	12,893/3,839	0/650	No
<b>Hawaii</b>	346/25	348/25	2/0	Yes
<b>Iowa</b>	15,406/8,038	15,454/8,048	48/10	Yes
<b>Kansas</b>	45,535/32,079	45,563/31,805	28/274	Yes
<b>Montana</b>	688/378	653/357	35/21	Yes
<b>Nebraska</b>	17,421/13,788	17,003/13,298	418/490	Yes
<b>Nevada</b>	6,153/2,446	6,154/2,447	1/1	Yes
<b>New Mexico</b>	6,410/2,914	15,360/8,767	8,950/5,853	Yes
<b>N. Carolina</b>	77,469/50,370	77,469/42,348	0/8,022	No
<b>Ohio</b>	157,714/123,902	158,642/123,548	928/354	Yes
<b>Pennsylvania</b>	No data	53,698/26,092	53,698/26,092	Yes
<b>Texas</b>	35,282/7,156	36,193/7,770	911/614	Yes
<b>Vermont</b>	121/30	101/37	20/7	No
<b>Virginia</b>	4,608/728	4,609/728	1/0	Yes
<b>Washington</b>	92,402/73,806	86,239/69,273	6,163/4,533	Yes
<b>Wisconsin</b>	374/119	373/120	1/1	No

<sup>51</sup> Data not provided by the state itself is taken from Electionline figures.

## **Appendices**

- a. Summary of Voter ID Requirements by State
- b. Summary of case law on Voter ID issues
- c. Vercellotti --Analysis of Effects of Voter ID Requirements on Turnout
- d. Indexed database of major articles on Voter ID Requirements and related topics
- e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

## Appendix A Summary of Voter Identification Requirements By State

Prepared by  
Sara A. Sampson, Reference Librarian,  
The Ohio State University Moritz College of Law.

### Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	<p>(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification:</p> <p>(1) A current valid photo identification.            (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following:</p> <p>a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification.            b. A valid United States passport.            c. A valid Alabama hunting or fishing license.            d. A valid Alabama permit to carry a pistol or revolver.            e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States.            f. A valid United States military identification card.            g. A certified copy of the elector's birth certificate.            h. A valid Social Security card.            i. Certified naturalization documentation.            j. A certified copy of court records showing adoption or name change.            k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card").</p> <p>(c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b).            (e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law.</p> <p>(f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs.</p> <p>Effective Date: June 24, 2003</p>	Ala. Code § 17-11A-1
Alaska	Provide ID	<p>(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including</p> <p>(1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or</p> <p>(2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this</p>	Alaska Stat. § 15.15.225

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		<p>paragraph must show the name and current address of the voter.</p> <p>(b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under <u>AS 15.07.050</u>, and did not provide identification as required in <u>AS 15.07.060</u>.</p> <p>(c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.</p> <p>effective June 17, 2003</p>	
Arizona	Provide ID	<p>B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot:</p> <p>1. The person shall present either one of the following:</p> <p>(a) A current form of identification that bears a photograph of the person and the name of the person.</p> <p>(b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person.</p> <p>2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by <u>§ 16-584</u>.</p> <p>Effective Dec. 1, 2003</p>	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	<p>7-5-305. Requirements.</p> <p>(a) Before a person is permitted to vote, the election official shall:</p> <p>(1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list;</p> <p>(2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth;</p> <p>(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;</p> <p>(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate;</p> <p>(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.</p> <p>(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.</p> <p>(C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct;</p> <p>(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;</p> <p>(7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and</p>	Arkansas Code Annotated § 7-5-305



		<p>(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card.</p> <p>(B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification.</p> <p>(ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.</p> <p>(iii) The prosecuting attorney may investigate possible voter fraud; and</p> <p>(9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the person is a disabled voter and presents himself or herself to vote.</p> <p>Effective: July 16, 2003</p>	
California	Sign Name	<p>Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article.</p> <p>(Enacted in 1994, no amendments since)</p>	Cal. Elec. Code § 14216
Colorado	Provide ID	<p>(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in <u>section 1-1-104(19.5)</u>, write his or her name and address on the signature card, and give the signature card to one of the election judges, * * *</p> <p>(4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title.</p> <p>(19.5)(a) "Identification" means:</p> <p>(I) A valid Colorado driver's license;</p> <p>(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.;</p> <p>(III) A valid United States passport;</p> <p>(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;</p> <p>(V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;</p> <p>(VI) A valid United States military identification card with a photograph of the eligible elector;</p> <p>(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;</p> <p>(VIII) A valid medicare or medicaid card issued by the United States health care</p>	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

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		<p>financing administration;</p> <p>(IX) A certified copy of a birth certificate for the elector issued in the United States; or</p> <p>(X) Certified documentation of naturalization.</p> <p>(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.</p> <p>Effective 5/28/2004</p>	
Connecticut	Provide ID	<p>(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by <u>section 9-23r</u>, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.</p> <p>Effective May 10., 2004</p>	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	<p>(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record.</p> <p>Effective: July 9, 2002</p>	15 Del. Code § 4937
D.C.	Sign Name	<p>(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection.</p> <p>(2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the</p>	D.C. Code § 1-1001.07

		<p>polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection.</p> <p>(3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records.</p> <p>(Effective April 3, 2001)(not added as part of 2005 amendment)</p>	
Florida	Photo ID	<p>101.043 (1) The precinct register, as prescribed in <u>s. 98.461</u>, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in <u>s. 97.0535(3)(a)</u>. If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.</p> <p>(2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in <u>s. 101.49</u>.</p> <p><b>97.0535</b> (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired:</p> <ol style="list-style-type: none"> <li>1. Florida driver's license.</li> <li>2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles.</li> <li>3. United States passport.</li> <li>4. Employee badge or identification.</li> <li>5. Buyer's club identification.</li> <li>6. Debit or credit card.</li> <li>7. Military identification.</li> <li>8. Student identification.</li> <li>9. Retirement center identification.</li> <li>10. Neighborhood association identification.</li> <li>11. Entertainment identification.</li> <li>12. Public assistance identification.</li> </ol> <p>(b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant:</p> <ol style="list-style-type: none"> <li>1. Utility bill.</li> </ol>	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535

		<p>2. Bank statement.</p> <p>3. Government check.</p> <p>4. Paycheck.</p> <p>5. Other government document (excluding voter identification card).</p> <p>Version effective 1/1/2005-12/31/2005</p>	
Georgia	Provide ID	<p>(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:</p> <ol style="list-style-type: none"> <li>(1) A valid Georgia driver's license;</li> <li>(2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;</li> <li>(3) A valid United States passport;</li> <li>(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;</li> <li>(5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business;</li> <li>(6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia;</li> <li>(7) A valid Georgia license to carry a pistol or revolver;</li> <li>(8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States;</li> <li>(9) A valid United States military identification card;</li> <li>(10) A certified copy of the elector's birth certificate;</li> <li>(11) A valid social security card;</li> <li>(12) Certified naturalization documentation;</li> <li>(13) A certified copy of court records showing adoption, name, or sex change;</li> <li>(14) A current utility bill, or a legible copy thereof, showing the name and address of the elector;</li> <li>(15) A bank statement, or a legible copy thereof, showing the name and address of the elector;</li> <li>(16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or</li> <li>(17) A government document, or a legible copy thereof, showing the name and address of the elector.</li> </ol> <p>(b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement."</p> <p>effective June, 2003</p>	Ga. Code. Ann. § 21-2-417

Hawaii	Photo ID	<p>(b) The voter shall present valid identification to the official in charge of the pollbook.</p> <p><i>Do I Need an I.D. to Vote on Election Day?</i>  <b>Yes.</b> Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification.</p> <p>From the 2004 version of the administrative code.</p> <p><b>§ 11-136 Poll book, identification, voting.</b></p> <p>Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.</p> <p>After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting.</p> <p>Last amended 2003.</p>	<p>Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b)</p> <p>Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix</p> <p>HRS 11-136</p>
Idaho	Sign Name	<p>(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.</p> <p>(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein.</p> <p>(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots.</p> <p>(Last amended in 1972)</p>	Id. St. §34-1106
Illinois	Give Name	<p>Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he</p>	10 Ill. Comp. Stat. 5/17-9

		<p>shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.</p>	
Indiana	Sign Name		West's Annotated Indiana Code § 3-11-8-25
Iowa	Sign Name	<p>1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:</p> <p style="text-align: center;"><b>VOTER'S DECLARATION OF ELIGIBILITY</b></p> <p>I do solemnly swear or affirm that I am a resident of the ..... precinct, ..... ward or township, city of ....., county of ....., Iowa.</p> <p>I am a registered voter. I have not voted and will not vote in any other precinct in said election.</p> <p>I understand that any false statement in this declaration is a criminal offense punishable as provided by law.</p> <p style="text-align: center;">_____ Signature of Voter</p> <p style="text-align: center;">_____ Address</p> <p style="text-align: center;">_____ Telephone</p> <p>Approved: _____</p>	Iowa Code § 49.77

		<p>Board Member</p> <p>2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials.</p> <p>3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.</p> <p>A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.</p> <p>(From 2004 version of Iowa Annotated Code; effective January 1, 1995)</p>	
Kansas	Sign Name	<p>(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention.</p> <p>(Approved April 14, 2004, 2004 Kansas Laws Ch. 93)</p>	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	<p>117.227 Confirmation of voter's identity</p> <p>Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification.</p> <p>Effective: 7/15/02</p> <p>31 KAR 4:010. Voter identification cards.</p> <p>Section 1. In addition to the forms of identification specifically provided for by <u>KRS 117.227</u>, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.</p>	<p>Ky Rev. Stat. Ann. 117.227</p> <p>31 Ky. Admin. Regs. 4:010.</p>
Louisiana	Photo ID	<p>A. Identification of voters.</p> <p>(1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place.</p> <p>(2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to <u>R.S. 40:1321</u>, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant</p>	La. Rev. Stat. Ann. 18:562

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		shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in <u>R.S. 18:565</u> .	
		Effective: 1/1/2002	
Maine	Give Name	The voting procedure is as follows.  1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice.  (In effect at time of 2003 amendment: 2003, c. 584, § 9)	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	10-310. (a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall: (1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot; (2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or (ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article; (3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register; (4) verify the address of the voter's residence; (5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and (6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.	Md. Elec. Law § 10-310
Mass.	Give Name	Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited.  Last amended in 1981  (5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).	Mass. Ann. Laws 54 § 76  950 Mass. Code Regs. 52.03
Michigan	Sign Name	(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state	Mich. Comp. Laws Ann. §



		<p>identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727.</p> <p>(2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector.</p> <p>The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies.</p> <p>(Effective March 31, 1997)</p>	<p>168.523</p>
<p>Minnesota</p>	<p>Sign Name</p>	<p>(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not</p>	<p>Minn. Stat. § 204C.10</p>

		<p>more than \$10,000, or both."</p> <p>(b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth.</p> <p>(c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.</p> <p>(Effective January 1, 2004)</p>	
Mississippi	Sign Name	<p>* * *</p> <p>When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was received for by his assistance.</p> <p>(Effective January 1, 1987)</p>	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	<p>1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list:</p> <p>(1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state;</p> <p>(2) Identification issued by the United States government or agency thereof;</p> <p>(3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri;</p> <p>(4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter;</p> <p>(5) Driver's license or state identification card issued by another state; or</p> <p>(6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose.</p> <p>(Last amended in 2002)</p>	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	<p>(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.</p> <p>(From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [ Unrelated section was amended in 2005])</p>	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	<p>(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document.</p> <p>(Last amended in 2003)</p> <p>Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter.</p> <p>(Last updated in 2003)</p>	<p>Neb. Rev. Stat. § 32-913</p> <p>Neb. Rev. Stat. § 32-914</p>
Nevada	Match Sig.	<p>1. Except as otherwise provided in <u>NRS 293.541</u>, if a person's name appears in the election board register or if he provides an affirmation pursuant to <u>NRS 293.525</u>, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2.</p> <p>2. Except as otherwise provided in <u>NRS 293.2725</u>, the forms of identification which may be used individually to identify a voter at the polling place are:</p> <p>(a) The card issued to the voter at the time he registered to vote;</p> <p>(b) A driver's license;</p> <p>(c) An identification card issued by the Department of Motor Vehicles;</p> <p>(d) A military identification card; or</p>	Nev. Rev. Stat. § 293.277

		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture.  Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.  Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification  a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers.  b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery.  c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5).  Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

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		<p>case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.</p> <p>E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot.</p> <p>G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.</p> <p>(From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)</p>	<p>(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)</p>
<p>New York</p>	<p>Match Sig.</p>	<ol style="list-style-type: none"> <li>1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith.</li> <li>2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election.</li> <li>3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature.</li> <li>4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the</li> </ol>	<p>N.Y. Law § 8-304 (McKinney)</p>

		<p>space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record.</p> <p>5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same</p> <p>Last Amended 1986</p>	
North Carolina	Give Name	<p>(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.</p>	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	<p>16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook.</p> <p>1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.</p> <p>(From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)</p>	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	<p>When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark.</p> <p>The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.</p> <p>(Effective at time of last update, 1992 H 182, eff. 4-9-93)</p>	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	<p>Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry.</p> <p>(Last amended in 1990)</p> <p>Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours.</p> <p>(Last amended in 1990)</p>	<p>Okla. Stat. Ann. tit. 26, § 7-114</p> <p>Okla. Stat. Ann. tit. 26, § 7-117</p>
Oregon	Match Sig.	<p>All elections in Oregon are Vote by Mail.</p> <p>An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity</p> <p>(<a href="http://www.uhavavote.org/votingguide/votebymail.html">http://www.uhavavote.org/votingguide/votebymail.html</a>) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)</p>	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		<p>polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.</p> <p>(In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))</p>	
<p>Rhode Island</p>	<p>Give Name</p>	<p>(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form:</p> <p><b>BALLOT APPLICATION</b></p> <p>(Poll List)          Senatorial District _____          Representative District _____          Voting District _____          Election _____          Date _____</p> <p>I hereby certify that I am a registered and qualified elector in the above voting district of          City of _____          and hereby make application for ballots to be voted at this election.</p> <p>_____</p> <p>(Signature of Voter)</p> <p>_____</p> <p>(Residence Address)          Number Approved _____</p> <p>(Supervisor of Election)</p>	<p>R.I. Gen. Laws § 17-19-24</p>



		<p>(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time.</p> <p>(Last amended 2004, Current through January 2005 Session)</p>	
South Carolina	Photo ID	<p><b>§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.</b></p> <p>When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5-125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.</p> <p>Last amended: 1968</p>	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	<p>When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either:</p> <ol style="list-style-type: none"> <li>(1) A South Dakota driver's license or nondriver identification card;</li> <li>(2) A passport or an identification card, including a picture, issued by an agency of the United States government;</li> <li>(3) A tribal identification card, including a picture; or</li> <li>(4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or</li> </ol>	S.D. Codified Laws § 12-18-6.1

		<p>technical school, located within the State of South Dakota.</p> <p>Last amended March 2004</p>	
Tennessee	Provide ID	<p>Identification of eligible voters</p> <p>(a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet.</p> <p>(2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists:</p> <p>(A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar;</p> <p>(B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list;</p> <p>(C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and</p> <p>(D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission.</p> <p>Last amended 2003</p>	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	<p>(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place.</p> <p>(Last amended in 1997)</p>	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	<p>(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges.</p> <p>(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.</p> <p>(3) If the election judge determines that the voter is registered:</p> <p>(a) the election judge in charge of the official register shall:</p> <p>(i) write the ballot number opposite the name of the voter in the official register; and</p>	Utah Code Ann. § 20A-3-104

		<p>(ii) direct the voter to sign his name in the election column in the official register;</p> <p>(b) another judge shall list the ballot number and voter's name in the pollbook; and</p> <p>(c) the election judge having charge of the ballots shall:</p> <p>(i) endorse his initials on the stub;</p> <p>(ii) check the name of the voter on the pollbook list with the number of the stub;</p> <p>(iii) hand the voter a ballot; and</p> <p>(iv) allow the voter to enter the voting booth.</p> <p>(In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)</p>	
Vermont	Give Name	<p>Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and:</p> <p>(1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting.</p> <p>(2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting.</p> <p>(Last amended in 2003)</p>	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	<p>§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification</p> <p>A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him.</p> <p>B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.</p> <p>If the voter's name is found on the pollbook, if he presents one of the forms of</p>	Va. Code. Ann.

		<p>identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth.</p> <p>Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.</p> <p>(Version in effect as of 2004- effective 4/12/2004)</p>	
Washington	Sign Name	<p>29A.44.201.</p> <p>A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter.</p> <p>(In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004)</p> <p>29A.44.210.</p> <p>Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.</p> <p>The precinct election officers shall then record the voter's name.</p> <p>Effective date: July 1, 2004</p>	<p>Wash. Rev. Code § 29A.44.201 &amp; 29A.44.210</p>
West Virginia	Match Sig.	<p>(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon.</p> <p>* * *</p> <p>(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the</p>	<p>W. Va. Code § 3-1-34 (a)</p>

		<p>election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.</p> <p>(In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)</p>	
Wisconsin	Give Name	<p>6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number.</p> <p>(In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)</p>	Wis. Stat. § 6.79
Wyoming	Give Name	<p>(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22-15-109, no identification shall be required when:</p> <p>(i) Voting in person or by mail after having registered in person; or</p> <p>(ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election.</p> <p>(In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)</p>	Wyo. Stat. Ann. § 22-3-118

## APPENDIX B – Court Decisions and Literature on Voter Identification and Related Issues

### Court Decisions

#### Summary of Relevant Cases:

#### Challenges Prevailed:

##### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

##### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

#### Challenges Rejected:

##### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters’ identifications should be verified and this method was not unreasonable or too burdensome

##### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions’ purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

*McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

*Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

*Perez v. Rhiddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

**Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

***American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).***

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

**Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that



provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

### **Current Litigation Concerning Voter ID Issues<sup>1</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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<sup>1</sup> As of January 2, 2006

**Georgia** (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>2</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>3</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

**Indiana** (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

<sup>2</sup> Litigation documents are available at the Election Law @ Moritz website.  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>3</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>4</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>4</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

## Appendix C

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### Analysis of Effects of Voter Identification Requirements on Turnout

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May 16, 2006

#### Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen turnout among those eligible to vote. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater based on specific types of requirements. Critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, such as a driver's license. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. This report draws from two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

#### Types of voter identification requirements

Based on research by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (10 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>5</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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<sup>5</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I also tested the array of minimum identification requirements to assess whether they posed increasing levels of demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

### **Estimating turnout among citizens in the voting-age population**

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.<sup>6</sup>

### **Analysis of aggregate data**

If one treats maximum voter identification requirements as a continuous variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter

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<sup>6</sup> McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

identification requirements ( $r = -.30$ ,  $p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20$ ,  $p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.2 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, I opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.<sup>7</sup>

Voter identification requirements alone do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county.

I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus I added a variable to reflect the number of days between each state's registration deadline and the election.<sup>8</sup>

<sup>7</sup> Treating maximum voter identification requirements as a continuous variable yielded results in which voter identification requirements were negatively related to aggregate turnout. Those results can be found in Table A-1 in the Appendix to this report.

<sup>8</sup> For states that had Election Day registration or no registration requirement (North Dakota), I assigned a value of zero to this variable.

Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the median household income for 2002 in each county.<sup>9</sup>

I estimated a series of random effects models to account for the likelihood that data from counties were correlated within each state (for further explanation of random effects and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>10</sup> I allowed the median income variable to have both fixed and random effects in each state to take into account variation in the cost of living in each state. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, two of the four requirements had a small and negative effect on turnout in 2004: matching one's signature and providing a non-photo identification. Taking into account the reference variable of stating one's name, the results indicate that turnout was lower in states that required signature matches or a non-photo identification than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Two contextual factors -- whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate-- increased voter turnout. The time between the closing date for registration and the election had a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income had positive effects on turnout. The percentage of African-Americans in the county did not have a significant effect.

The effects of the minimum voter identification requirements were non-existent. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to have a negative effect on turnout, as did the number of days between the closing date for registration and the election.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2),

<sup>9</sup> To bring the income figures into a scale comparable to those of the other variables, I used the natural log of median household income.

<sup>10</sup> The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.



showed no significant improvement by including the interactions ( $p > 0.05$ ). I report the coefficients for the models with the interactions in the Appendix in tables A-2 and A-3.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the identification requirements for voting vary, so does turnout. Specifically, in terms of the maximum requirements, the results suggest that requiring a signature match or non-photo identification is negatively related to turnout compared to requiring that a voter state his or her name. But the analysis showed that adding interactions between identification requirements and the percentage of the county that was African-American or Hispanic did not improve the fit of the model to the data.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>11</sup> Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

### Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>12</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>13</sup> As in the analysis of aggregate data, I coded the voter

<sup>11</sup> A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

<sup>12</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

<sup>13</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown

identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.<sup>14</sup>

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less.<sup>15</sup> At the individual level, I controlled for gender, household income, and dummy variables for race/ethnicity, age and education. In terms of race and ethnicity, I created dummy variables to represent whether a voter was Black/non-Hispanic, Hispanic, or Asian (with white/non-Hispanic/other voters as the omitted category for reference purposes). I separated education into five dummy variables: less than high school, high school diploma, some college, college graduate, and graduate training. I omitted the "less than high school" variable from the model for reference purposes. Regarding age, I created four dummy variables to represent 18 to 24 years of age, 29 to 44, 45 to 64, and 65 years and older. I omitted the 18-to-24 category as the reference variable in the model.

Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

## Results

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that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>14</sup> Earlier versions of this paper included an individual-level analysis that included the five maximum voter identification requirements combined into a continuous variable. The results of that analysis, which found that voter identification requirements had a negative relationship with turnout, can be found in table A-4 in the Appendix.

<sup>15</sup> Given that the individual-level analysis focused on registered voters (as opposed to the citizen voting-age population in the aggregate analysis), I did not include the closing date for registration as a predictor of turnout in the individual-level analysis.

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 3 here]

The two models in Table 3 use either the maximum or minimum voter identification requirements in each state. The two models generate similar results. In each model, three of the voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. In other words, compared to states that require voters only to state their names, the requirements to sign one's name, provide a non-photo identification, photo identification in the maximum requirements or affidavit in the minimum requires exert a negative influence on turnout.

Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had finished high school. Respondents who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>16</sup> I calculated the probabilities taking into account both maximum and minimum requirements.

[Table 4 here]

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability appear to decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>17</sup> In terms of the

<sup>16</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

<sup>17</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of

minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter identification requirements. But incorporating dummy variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, I divided the sample into sub-samples and re-ran the probit models.

[Table 5 here]

The effects of voter identification requirements were similar for white voters compared to the entire sample, which was not surprising given that white voters comprised 81 percent of the sample. Voters in states where the maximum requirement involved signing one's name, providing a non-photo identification or photo identification were less likely to vote than those in a state that required voters to give their names. Taking into consideration the minimum requirements, this was true only for voters in states that require a non-photo identification or an affidavit. White voters in photo identification states were 3.7 percent less likely to vote than were white voters in states where respondents gave their names. The difference in probability was 4.4 percent for voters in states where an affidavit was the minimum requirement.

Voter identification requirements also influenced turnout among Black voters, but to a lesser extent relative to white voters.

[Table 6 here]

Of the maximum voter identification requirements, only the non-photo identification requirement reduced turnout compared to turnout in states that required voters to state their names. The predicted probability of voting was 5.7 percent lower for Black respondents in states that required non-photo identification. In terms of age, only African-Americans age 65 and older were more likely to vote than respondents in the 18 to 24 referent group. Respondents in all levels of education were more likely to vote than respondents without a high school diploma. Gender, income, living in a battleground state, being a part of the workforce and having been born in the United States also were positive predictors. Recent mobility tended to lower the probability of voting. None of the minimum identification requirements had a significant effect on voting, while most of the remaining variables had effects similar to those in the maximum requirement model.

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all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Hispanic voters also were less likely to vote in states that required non-photo identification as opposed to stating one's name.

[Table 7 here]

Using the coefficients from Table 7 to calculate predicted probabilities, for both the maximum and minimum requirements, Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. Hispanic voters ages 45 to 64 and 65 and over were more likely to vote than their 18-to-24-year-old counterparts. Education and income also were positive predictors of voting. Interestingly, being a native-born citizen lowered the probability of voting, while native-born citizenship was a positive predictor for African-American voters and was not a predictor at all for white voters. It may be that naturalized citizens of Hispanic descent are more conscious of the value of voting rights than other groups.

Varying voter identification requirements influenced Asian-American voters as well. As with Hispanic and Black voters, Asian-American voters were less likely to turn out in states with non-photo identification requirements than in states where voters gave their names.

[Table 8 here]

Using the probit coefficients to calculate predicted probabilities, Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement. Asian-American voters also were 2.2 percent less likely to vote when signatures were the maximum requirement compared to stating one's name.

In terms of other predictors, there were no significant differences in terms of age or income. In contrast to Hispanic voters, where one was a naturalized or natural-born citizen did not affect the probability of voting. Those with high school or college diplomas or graduate training were more likely to turn out than those with less than a high school diploma. Women and married voters also were more likely to turn out than men and voters who were not married.

## **Discussion and conclusion**

The results presented here provide evidence that as voter identification requirements vary, voter turnout does as well. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

In the aggregate data, requirements that voters match signatures on file, provide a non-photo identification or photo identification had negative effects on turnout compared to requiring that voters state their names. Interactions with specific groups – African-Americans and Hispanics – did not improve the fit of the aggregate data to the models. But differences emerged among specific groups in the individual-level data. The signature, non-photo identification and photo identification requirements all had negative effects compared to the requirement that voters simply state their names. These effects translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For

example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This begs the question as to why photo identification requirements did not have a greater influence in 2004. It may have been due to the fact that photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?<sup>18</sup> Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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<sup>18</sup> The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using the November 2004 Current Population Survey data and voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Of all of the voter identification requirements, only requiring signatures or matching signatures had a significant effect on whether a respondent said he or she was registered to vote in 2004. In each instance the effect was negative.

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<b>Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements</b>			
<b>Maximum Requirement</b>		<b>Minimum Requirement</b>	
<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>	<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>
<b>State Name</b>	64.2 %	<b>State Name</b>	63.0 %
<b>Sign Name</b>	61.1 %	<b>Sign Name</b>	60.8 %
<b>Match Signature</b>	60.9 %	<b>Match Signature</b>	61.7 %
<b>Provide Non-Photo ID</b>	59.3 %	<b>Provide Non-Photo ID</b>	59.0 %
<b>Provide Photo ID</b>	58.1 %	<b>Swear Affidavit</b>	60.1 %
<b>Average Turnout for All States</b>	60.9 %		

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**Table 2. Predictors of 2004 turnout at the county level taking into account maximum and minimum voter identification requirements**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	-1.34**	0.14	-1.36**	0.4
Sign Name	-0.01	0.012	0.002	0.02
Match Signature	-0.03*	0.014	-0.001	0.02
Non-photo ID	-0.04**	0.013	-0.01	0.02
Photo Identification	-0.02	0.019	----	----
Affidavit	----	----	-0.01	0.02
Battleground State	0.04**	0.01	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01	0.04*	0.02
Registration Closing Date	-0.002**	0.0005	-0.003**	0.001
% African-American	0.02	0.01	0.02	0.01
% Hispanic	-0.05**	0.01	-0.05**	0.01
% Age 65 or older	0.82**	0.03	0.82**	0.03
Median Household Income	0.18**	0.01	0.18**	0.01
-2 Log Likelihood	-8953.8		-8946.9	

Coefficients are restricted maximum likelihood estimates. N = 3,111. \* p < .05 \*\* p < .01 (one-tailed tests)

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**Table 3. Probit model of voter turnout.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	----	----
Affidavit	----	----	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian-American	-0.37**	0.07	-0.38**	0.07
Age 25-44	0.004	0.02	0.003	0.02
Age 45-64	0.26**	0.03	0.26**	0.03
Age65+	0.43**	0.03	0.43**	0.03
High School	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate School	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo-R-Squared	0.09		0.10	

Notes: N = 54,973 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

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<b>Table 4. Predicted probability of voter turnout – full model</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.917	0.915
<b>Sign name</b>	0.899	0.902
<b>Match signature</b>	(N.S.)	(N.S.)
<b>Non-photo ID</b>	0.890	0.890
<b>Photo ID</b>	0.888	----
<b>Affidavit</b>	----	0.875
<b>Total difference from “state name” to “photo identification” or “affidavit”</b>	0.029	0.040
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

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**Table 5. Probit model of turnout for White voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.10*	0.05	-0.07	0.04
Match signature	-0.04	0.05	-0.01	0.06
Non-photo ID	-0.14**	0.06	-0.14**	0.06
Photo ID	-0.22**	0.08	----	----
Affidavit	----	----	-0.26**	0.05
Age 25-44	-0.01	0.03	-0.01	0.03
Age 45-64	0.25**	0.03	0.25**	0.03
Age65+	0.44**	0.04	0.44**	0.04
High School	0.36**	0.03	0.36**	0.03
Some college	0.64**	0.03	0.64**	0.03
College	0.95**	0.04	0.96**	0.04
Graduate School	1.05**	0.05	1.05**	0.05
Household income	0.03**	0.004	0.03**	0.003
Married	0.27**	0.02	0.27**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.16**	0.04	0.16**	0.04
Competitive race	0.07	0.07	0.07	0.06
Employed	0.08	0.05	0.08	0.05
Member of workforce	0.0003	0.05	0.003	0.05
Native-born citizen	0.08	0.08	0.08	0.08
Moved within past 6 months	-0.28**	0.03	-0.28**	0.03
Constant	-0.23*	0.11	-0.24**	0.10
Pseudo-R-Squared	.10		.10	

Notes: N = 44,760 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

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Table 6. Probit model of turnout for African-American voters.				
Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.13	0.09	-0.08	0.13
Match signature	-0.05	0.10	-0.17	0.13
Non-photo ID	-0.24**	0.07	-0.14	0.12
Photo ID	-0.10	0.12	----	----
Affidavit	----	----	-0.05	0.19
Age 25-44	-0.004	0.09	-0.004	0.09
Age 45-64	0.12	0.09	0.13	0.09
Age65+	0.30**	0.12	0.31**	0.12
High School	0.24**	0.06	0.25**	0.06
Some college	0.40**	0.07	0.40**	0.07
College	0.69**	0.08	0.68**	0.08
Graduate School	0.99**	0.19	0.98**	0.19
Household income	0.04**	0.01	0.05**	0.008
Married	0.11	0.07	0.11	0.07
Female	0.14**	0.04	0.14**	0.04
Battleground state	0.13*	0.07	0.21**	0.08
Competitive race	-0.10	0.07	-0.16	0.10
Employed	-0.09	0.11	-0.09	0.10
Member of workforce	-0.32**	0.12	-0.31**	0.11
Native-born citizen	0.31**	0.11	0.28**	0.12
Moved within past 6 months	-0.32**	0.06	-0.32**	0.06
Constant	0.16	0.18	0.12	0.17
Pseudo-R-Squared	0.09		0.09	
Notes: N = 5,013 registered voters				
p < .05* p < .01** (one-tailed tests)				
Models were estimated with robust standard errors to correct for correlated error terms within each state.				
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004				

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**Table 7. Probit model of turnout for Hispanic voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.20	0.20	-0.19	0.11
Match signature	-0.12	0.20	-0.18	0.12
Non-photo ID	-0.40*	0.20	-0.38**	0.13
Photo ID	-0.13	0.23	----	----
Affidavit	----	----	-0.25	0.16
Age 25-44	0.11	0.09	0.11	0.09
Age 45-64	0.35**	0.10	0.36**	0.10
Age65+	0.38**	0.11	0.40**	0.11
High School	0.18**	0.08	0.19*	0.08
Some college	0.46**	0.07	0.46**	0.07
College	0.63**	0.11	0.64**	0.11
Graduate School	0.72**	0.13	0.73**	0.13
Household income	0.03**	0.01	0.03**	0.01
Married	0.05	0.06	0.05	0.06
Female	0.09*	0.04	0.09*	0.04
Battleground state	0.31**	0.06	0.36**	0.07
Competitive race	-0.06	0.13	-0.05	0.13
Employed	0.13	0.12	0.14	0.12
Member of workforce	0.07	0.13	0.08	0.13
Native-born citizen	-0.18**	0.07	-0.20**	0.07
Moved within past 6 months	-0.38**	0.08	-0.39**	0.08
Constant	0.22	0.27	0.21	0.20
<b>Pseudo-R-Squared</b>	0.08		0.08	

Notes: N = 2,860 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

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**Table 8. Probit model of turnout for Asian-American voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.37**	0.20	-0.26	0.17
Match signature	-0.17	0.22	-0.01	0.21
Non-photo ID	-0.40**	0.21	-0.28*	0.16
Photo ID	-0.30	0.21	----	----
Affidavit	----	----	0.12	0.30
Age 25-44	-0.11	0.23	-0.10	0.23
Age 45-64	0.06	0.26	0.08	0.26
Age65+	0.14	0.36	0.17	0.34
High School	0.54**	0.21	0.55**	0.21
Some college	0.36	0.31	0.36	0.31
College	0.67**	0.22	0.66**	0.23
Graduate School	0.57*	0.25	0.55*	0.26
Household income	0.01	0.01	0.01	0.01
Married	0.34**	0.13	0.34**	0.13
Female	0.16*	0.09	0.16*	0.08
Battleground state	0.29*	0.14	0.23	0.16
Competitive race	0.33*	0.19	0.27	0.22
Employed	-0.24	0.33	-0.25	0.33
Member of workforce	-0.54	0.35	-0.55	0.35
Native-born citizen	0.14	0.12	0.16	0.11
Moved within past 6 months	-0.38*	0.17	-0.39*	0.17
Constant	0.36	0.52	0.29	0.51
<b>Pseudo-R-Squared</b>	0.08		0.08	

Notes: N = 912 registered voters

$p < .05^*$   $p < .01^{**}$  (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

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**Appendix**

<b>Table A-1. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements treated as a continuous variable.</b>		
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Intercept</b>	-1.33**	0.14
<b>Voter Identification Requirements</b>	-0.01**	0.004
<b>Battleground State</b>	0.04**	0.01
<b>Competitive Senate/Governor's Race</b>	0.04**	0.01
<b>% African-American</b>	0.02	0.01
<b>% Hispanic</b>	-0.05**	0.01
<b>% Age 65 or older</b>	0.82**	0.03
<b>Median Household Income</b>	0.18**	0.01
<b>Registration Closing Date</b>	-0.002**	0.001
<b>-2 Log Likelihood</b>	-8970.1	
Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (one-tailed tests).		

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<b>Table A-2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements and interactions.</b>		
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
Intercept	-1.39**	0.14
Sign Name	-0.02	0.013
Match Signature	-0.03*	0.02
Non-photo ID	-0.05**	0.01
Photo Identification	-0.05**	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	-0.02	0.03
% Hispanic	-0.22**	0.10
% Age 65 or older	0.8**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
Signature*African-American	0.02	0.04
Match Signature*African-American	0.16**	0.07
Non-photo ID*African-American	0.03	0.03
Photo ID*African-American	0.20**	0.05
Signature*Hispanic	0.14	0.09
Match Signature*Hispanic	-0.01	0.11
Non-photo ID*Hispanic	0.20**	0.09
Photo ID*Hispanic	0.03	0.11
<b>-2 Log Likelihood</b>	<b>-8966.7</b>	
Coefficients are restricted maximum likelihood estimates. N = 3,111.		
* p < .05 ** p < .01 (one-tailed tests).		

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<b>Table A-3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements and interactions.</b>		
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
Intercept	-1.39**	0.14
Sign Name	0.0003	0.016
Match Signature	-0.001	0.02
Non-photo ID	-0.02	0.02
Affidavit	-0.02	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.02
% African-American	-0.02	0.02
% Hispanic	-0.19**	0.08
% Age 65 or older	0.82**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.003**	0.001
Signature*African-American	-0.007	0.03
Match Signature*African-American	0.15**	0.05
Non-photo ID*African-American	0.04	0.03
Affidavit*African-American	0.18**	0.05
Signature*Hispanic	0.12	0.08
Match Signature*Hispanic	-0.03	0.11
Non-photo ID*Hispanic	0.17*	0.08
Affidavit*Hispanic	-0.04	0.10
-2 Log Likelihood	-8960.8	
Coefficients are restricted maximum likelihood estimates. N = 3,111.		
* p < .05 ** p < .01 (one-tailed tests).		

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**Table A-4. Probit model of voter turnout treating maximum voter identification requirements as a continuous variable.**

<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Voter Identification Requirements</b>	-0.04**	0.02
<b>Hispanic</b>	-0.09	0.05
<b>African-American</b>	0.24**	0.04
<b>Asian-American</b>	-0.38**	0.07
<b>Age 25-44</b>	0.005	0.02
<b>Age 45-64</b>	0.26**	0.03
<b>Age65+</b>	0.43**	0.03
<b>High School</b>	0.31**	0.02
<b>Some college</b>	0.57**	0.03
<b>College</b>	0.87**	0.04
<b>Graduate School</b>	0.98**	0.05
<b>Household income</b>	0.03**	0.003
<b>Married</b>	0.23**	0.02
<b>Female</b>	0.10**	0.01
<b>Battleground state</b>	0.19**	0.04
<b>Competitive race</b>	0.04	0.05
<b>Employed</b>	0.05	0.05
<b>Member of workforce</b>	-0.05	0.05
<b>Native-born citizen</b>	0.02	0.04
<b>Moved within past 6 months</b>	-0.29**	0.03
<b>Constant</b>	-0.08	0.10
<b>Pseudo-R-Squared</b>	0.09	

Notes: N = 54,973 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

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**APPENDIX D**

**Annotated Bibliography on Voter Identification Issues**

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

**Historical articles:**

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

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**For review by the EAC's Advisory Boards**

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

**Marginally relevant/limited discussion of Voter ID issues**

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
  - History of voting and requirements
  - Theory

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**REVISED FINAL D R A F T**  
**For review by the EAC's Advisory Boards**

**Appendix E**

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

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**FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

**Report to the  
U. S. Election Assistance Commission  
On  
Best Practices to Improve Voter Identification Requirements  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252**

May 16, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

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**Deliberative Process  
Privilege**

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

## Project Management Team

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# **FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

## **Peer Review Group**

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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## REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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### Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

#### Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

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- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

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Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:<sup>1</sup> the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.<sup>2</sup> Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.<sup>3</sup> As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

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<sup>1</sup> See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

<sup>2</sup> The EAC has contracted with other researchers to study vote fraud issues.

<sup>3</sup> Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*.

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voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.<sup>4</sup> The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

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<sup>4</sup> Even the most relaxed provisions for identification at the polls—anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

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It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a “minimum” requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

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significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

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example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>5</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

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<sup>5</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

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or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
  - I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
  - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

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the convenience of the voter, the total time allowed to evaluate ballots<sup>6</sup>, and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends.

Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

## **SUMMARY OF RESEARCH**

### **Background and Approach of the Study**

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether the vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

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<sup>6</sup> Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.
  
- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.
  
- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

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- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>7</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>8</sup>

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<sup>7</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

<sup>8</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

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We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>9</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

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<sup>9</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>10</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>11</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>12</sup>

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<sup>10</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>11</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

<sup>12</sup> "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

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2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>13</sup>
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>14</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>15</sup> A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>16</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

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<sup>13</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>14</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>15</sup> "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

<sup>16</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

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intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

**Voter ID and Turnout**

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>17</sup> Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.<sup>18</sup>

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

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<sup>17</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

<sup>18</sup> As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.



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identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a “minimum” requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state’s voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.<sup>19</sup> Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state’s legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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<sup>19</sup> One state election official told us that, “We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is.”

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**TABLE 1 – Voter ID Requirements<sup>20</sup>**

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID <sup>1</sup>	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID <sup>2</sup>	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID <sup>^^</sup>	Photo ID	Photo ID <sup>^^</sup>	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID <sup>^</sup>	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID <sup>†</sup>	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

<sup>20</sup> See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

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South Carolina	Photo ID <sup>5</sup>	Photo ID	Photo ID <sup>^^</sup>	Address & Registration
South Dakota	Photo ID <sup>6</sup>	Photo ID	Photo ID <sup>^^</sup>	Affidavit
Tennessee	Provide ID	Provide ID <sup>7</sup>	Provide ID	Affidavit
Texas	Provide ID	Provide ID <sup>8</sup>	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

\* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

<sup>1</sup> Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

<sup>2</sup> Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

<sup>3</sup> Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

<sup>4</sup> Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

<sup>5</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>6</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>7</sup> Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

<sup>8</sup> Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

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Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	<b>64.2 %</b>	State Name	<b>63.0 %</b>
Sign Name	<b>61.1 %</b>	Sign Name	<b>60.4 %</b>
Match Signature	<b>60.9 %</b>	Match Signature	<b>61.7 %</b>
Provide Non-Photo ID	<b>59.3 %</b>	Provide Non-Photo ID	<b>59.0 %</b>
Provide Photo ID	<b>58.1 %</b>	Swear Affidavit	<b>60.1 %</b>
<i>Average Turnout (All States)</i>	<b>60.9 %</b>		

**This table displays the mean turnout using the aggregate county level data for each state in 2004.**

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

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emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.<sup>21</sup>

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American<sup>22</sup>
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

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<sup>21</sup> The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

<sup>22</sup> The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

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The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.<sup>23</sup>

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

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<sup>23</sup> This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

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requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.<sup>24</sup> Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

#### Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>25</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

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<sup>24</sup> For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>24</sup> Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

<sup>25</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

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influenced turnout in 2004.<sup>26</sup> The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>27</sup>

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.<sup>28</sup> Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>29</sup>

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<sup>26</sup> The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

<sup>27</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>28</sup> A probit model is a popular specification of a generalized linear regression model, using the probit link function.

<sup>29</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

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<b>Table 3. Predicted probability of voter turnout – all voters</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	91.7%	91.5%
<b>Sign name</b>	89.9%	90.2%
<b>Match signature</b>	Not significant	Not significant
<b>Non-photo ID</b>	89.0%	89.0%
<b>Photo ID</b>	88.8%	----
<b>Affidavit</b>	----	87.5%
<b>Total difference from “state name” to “photo ID” or “affidavit”</b>	<b>2.9%</b>	<b>4.0%</b>
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>30</sup> In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

<sup>30</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

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Race and ethnicity have generated particular interest in the debate over voter ID requirements.<sup>31</sup> The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

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<sup>31</sup> Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

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In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

**Litigation Over Voter ID Requirements**

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*). Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the

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only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.<sup>32</sup> Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL

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<sup>32</sup> Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

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**For review by the EAC's Advisory Boards**

2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

**Developments since 2004**

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**For review by the EAC's Advisory Boards**

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

#### State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at:

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**For review by the EAC's Advisory Boards**

the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

**Conclusions**

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.<sup>33</sup>

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

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<sup>33</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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**For review by the EAC's Advisory Boards**

with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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028736





"Tova Wang"  
<wang@tcf.org>  
06/12/2006 05:00 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: FYI

Thanks Adam. I've been trying to get Tim Storey about this, but with no luck so far. Any news with you?  
Tova

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

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Monday, June 12, 2006 9:06 AM  
**To:** wang@tcf.org  
**Subject:** FYI

I don't know if you had heard about this but in NCSL's annual conference, they're having a piece on Voter ID and fraud issues. I don't know who's on that panel, but I thought I would let you know, since so much of that work is being done through the state legislatures. Hope all is well, and thanks for the updates....

<http://www.ncsl.org/annualmeeting/agenda/showmain3.cfm?requesttimeout=90>

## **Tuesday, August 15, 2006**

**10:15 am - 5:15 pm Redistricting & Elections Committee**

### ***Supremes Rule on Re-Redistricting of Texas***

10:15 am - 11:30 am

Three years after the highly publicized redrawing of Texas congressional districts, the U.S. Supreme Court ruled in June on whether the Legislature acted unconstitutionally. How will the decision alter the redistricting process? What subtle, but critical, lines were buried in the text of the opinions?

### ***Legislative Competition and the role of Gerrymandering?***

11:30 am - 12:45 pm

Are legislative elections really less competitive today than in the past? Is gerrymandering the culprit or one of many reasons. New research helps put the redistricting factor in perspective.

### ***Are Voters Who they Say they Are?***

1:00 pm - 2:00 pm

Many states continue to look at the issue of voter ID and struggle with balancing the need for maximum access to the polls with trying to eliminate any possible fraud. How big is this problem and what are states doing about it?

### ***Will Fall Elections Run like Clockwork?***

2:00 pm - 3:00 pm

Since the controversial 2000 election debacle, most states have implemented key election

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reforms to shore up the system and respond to federal legislation. Will this fall's 2006 election go off without a hitch or will new problems emerge in the voting process?

### ***What's Next in Redistricting Technology***

3:15 pm - 4:15 pm

Redistricting software vendors will preview and demonstrate what they are planning for 2010. They will be discuss things like the next generation of redistricting technology with support for desktop, Web based and PDA/Cellular applications.

### ***Countdown to Census 2010***

4:15 pm - 5:15 pm

Speakers: Linda Franz, Geographer, U.S. Census Bureau, Washington, D.C.  
Bob LaMacchia, Chief, Geography Division, U.S. Census Bureau, Washington, D.C.  
Cathy McCully, Chief, Census Redistricting Data Office, U.S. Census Bureau, Washington, D.C.

## **Wednesday, August 16, 2006**

**10:15 am - 11:30 am Redistricting & Elections Committee**

### ***Are 527s Here to Stay?***

In many states, the so-called 527 groups are likely to play a major part in this fall's campaigns. What are they? Should they be regulated? Can they be regulated? What are states doing in this area?

**2:45 pm - 4:15 pm Money and Politics**

As ethical scandals over campaign contributions and influence-buying swirl around Washington, D.C., states once again take the lead in finding new solutions to an old problem. This session will highlight states' innovative ideas for regulating money in politics and the role of lobbyists in fundraising and campaigns.

## **Friday, August 18, 2006**

**8:30 am - 10:00 am General Session and Breakfast**

### ***SPEAKERS :***

Peter Hart has been one of the country's leading public opinion analysts for more than 27 years. He conducts all public opinion polling for NBC News and The Wall Street Journal. His focus is public policy, cultural and social issues, and strategic consulting for corporations, including Time Warner, Microsoft, Kodak to name a few.

Frank Luntz is one of the most honored communications professionals in America today. Named one of the four Top Research Minds by Business Week magazine, he pioneered the Instant Response focus group research technique, and won an Emmy Award in 2001 for his 100 Days, 1000 Voices segments on NBC's primary and election night coverage.

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02873E

Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028739



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov  
>  
06/20/2006 05:43 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject Re: State election fraud statute collection?

I am currently in Europe on official DOJ business. Please call Nancy Simmons, 202-514-1440. We have what you request -- I think, and if we do she can e-mail it to you.

-----  
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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

From: aambrogi@eac.gov <aambrogi@eac.gov>  
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>  
Sent: Tue Jun 20 15:01:40 2006  
Subject: State election fraud statute collection?

Dear Craig:


Hope is well with you. Hoping that you can help us out with a quick request from a member of congressional committee. They would like to know if there exists a list (compendium or index) of state election laws on crime and fraud specifically. They are trying to get access to such a list as soon as possible, for a Congressional hearing on Thursday. If no list exists to your knowledge, that's great. If it does exist, and we can get access to it, please let me know.

Thanks so much, Craig. I hope all is well.  
Best,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028740

Karen Lynn-Dyson/EAC/GOV  
07/27/2006 09:11 AM

To "Thad Hall" <thadhall@gmail.com>@GSAEXTERNAL  
cc Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Eileen L. Collver/EAC/GOV@EAC  
bcc  
Subject Re: Election Fraud Conference 

History  This message has been forwarded

Thad-

I've forwarded your message to each of the Commissioners' Special Assistants-  
Amie Sherill ( deGregorio),  
Adam Ambrogi (Martinez)  
Sheila Banks ( Hillman)  
Eileen Collver ( Davidson).

They will be back in touch with you regarding the best address and method of contacting each of them.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Thad Hall" <thadhall@gmail.com>



"Thad Hall"  
<thadhall@gmail.com>  
07/26/2006 07:10 PM

To "klynndyson@eac.gov" <klynndyson@eac.gov>  
cc  
Subject Election Fraud Conference

Karen:

Mike Alvarez are going to be inviting you and the four EAC commisssioners to a conference we are hosting on election fraud. Can you provide me with the email addresses for the EAC commissioners so we can send them an email invitation?

Thank you very much.

Thad

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028741

Thad Hall, Assistant Professor  
Dept. of Political Science, University of Utah  
801-585-7344  
<http://www.poli-sci.utah.edu/HALL.htm>  
contributor to <http://electionupdates.caltech.edu>

028742

Karen Lynn-Dyson/EAC/GOV

02/18/2005 03:53 PM

To Sheila A. Banks/EAC/GOV@EAC, Holland M. Patterson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Spring A.

cc

bcc

Subject Fw: Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Hey-

Forgot to cc you all on this.

Thanks

K

Karen Lynn-Dyson  
Director, Help America Vote College Program  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 02/18/2005 03:50 PM —

Karen Lynn-Dyson/EAC/GOV

02/17/2005 04:02 PM

To Gracia Hillman, Paul DeGregorio, DeForest Soaries, Ray Martinez

cc Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC

Subject Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Commissioners-

As was discussed during our session on February 17, 2005, please *review and provide your approval , disapproval or amendments* to the following items by Friday, February, 25, 2005:

1. The attached Scope of Work which outlines the tasks related to contract work around projects relating to voluntary guidance on provisional voting and voter identification procedures.
2. The proposal will be advertised beginning **February 28, 2005**.
3. The deadline for submitting proposals will be **March 14, 2005**.
4. Proposal review will be completed by EAC staff by **March 17, 2005**
5. Staff will recommend a contractor to the Commissioners on **March 18, 2005**.
6. Commissioners will be asked for their decisions no later than **Tuesday, March 22, 2005**

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Statement of Work - Provisional Voting, Voter ID.doc

Thank you for your help and attention to this matter.

K  
Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028744



February 14, 2005

PROVIDING EAC ASSISTANCE IN DEVELOPING VOLUNTARY GUIDANCE ON  
PROVISIONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

0.0 Contract Title: Assistance to the U.S. Election Assistance Commission in the Development of Guidance on Provisional Voting and Voter Identification Procedures

1.0 Background: Sec. 302(a) of HAVA requires that all States allow the casting of provisional ballots in instances where a voter declares their eligibility to vote but their name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. This section describes several requirements for implementation of provisional voting, but the States have considerable latitude in specifying how to carry out these requirements. The EAC seeks to examine how provisional voting was implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 Federal elections.

HAVA Sec. 303(b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents will result.

2.0 Objective: The objective of this contract is for EAC to obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics for promulgation to the States in time for implementation for the 2006 Federal elections. The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

3.0 Scope: In general the Contractor shall be responsible for all research and analysis activities, including the conduct of public hearings for fact finding and public comment purposes. However, in light of the urgent need to get this work underway, the EAC has scheduled a public hearing on February 23, 2005, on the topic of provisional voting.

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An initial framework for provisional voting policy has been set by the court decisions rendered on the election procedures utilized in the 2004 election. The 6<sup>th</sup> Circuit decision, in particular, has drawn some boundaries which must be given due regard in the course of considering future policy alternatives for provisional voting.

Notice of public meetings and hearings is required to be published in the Federal Register. The Contractor shall be responsible for preparing the notice documents, and the EAC will submit the notices and cover the cost of publication. In addition, draft guidance documents must be published in the Federal Register to obtain public comment prior to their adoption. Again, the Contractor will work with the EAC to prepare the draft documents for publication, which the EAC will submit and cover the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

#### 4.0 Specific Tasks

For ease of reference, following task 4.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is understood that the work on these two topics will be conducted essentially concurrently, with Voter Identification activities starting approximately one month after Provisional Voting.

- 4.1 Prepare a project work plan. The Contractor shall prepare and deliver a brief Project Plan not later than 10 days after contract award. This plan shall describe how the Contractor will accomplish each of the project tasks, including a timeline indicating major milestones. A single document will be prepared to include both provisional voting and voter identification tasks. The Plan shall be presented at a project kickoff meeting with the EAC Project Manager.
- 4.2 Submit monthly progress reports. The Contractor shall submit a monthly progress report within 2 weeks of the end of each month. This report shall provide a brief summary of activities performed and indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect schedule should be identified for resolution. Budget status should also be provided.
- 4.3 Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager and the lead Commissioner for this work to discuss research findings and progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor Project Manager and the EAC Project Manager as the work progresses. The Contractor may also be required to periodically brief the full Commission on their work.

#### Provisional Voting

- 4.4 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of the disparities and similarities of how provisional

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voting was implemented around the country will provide a baseline for the consideration of future approaches. Seventeen States never had provisional voting before HAVA was enacted, while many other States did. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

- 4.5 Recommend alternative approaches for future implementation of provisional voting. The Contractor shall conduct a literature review to identify other research results and data available on this topic. The EAC Election Day Survey, for example, contained several questions on provisional voting. The EAC will make these survey data available to the Contractor. Based on their analysis of available research and the results of Task 4.5, the Contractor shall diagnose the problems and challenges of provisional voting implementation and hypothesize alternative approaches.

The Contractor shall assess the efficacy of these alternatives in relation to the following inter-related policy objectives: (1) enabling the maximum number of eligible voters to cast ballots that will be counted; (2) providing procedural simplicity for voters, poll workers, and election officials; (3) minimizing opportunity for voter fraud; and (4) maintaining a reasonable workload for election officials and poll workers. Additional policy considerations may be identified in the course of this research effort. The Contractor shall document and brief these alternatives to the Commission.

- 4.6 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board of Advisors meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 4.7 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.
- 4.8 Arrange one public hearing for receiving public comment on draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the meeting
- 4.9 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

## Voter Identification Requirements

- 4.10 Collect and analyze State legislation, administrative procedures, and court cases. It is assumed that the collection of information for analysis of voter identification requirements will be performed concurrently with the research for Task 4.5. An understanding of the disparities and similarities of how voter identification requirements were implemented around the country will provide a baseline for the consideration of future approaches. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.
- 4.11 Convene a half day public hearing on the topic of voter identification requirements. The Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC. The Contractor shall identify three panels of three to four speakers each. The Contractor shall arrange for speaker attendance to include travel and per diem expenses. The EAC will provide publicity for the hearing. The Contractor shall prepare a document summarizing the proceedings and containing all testimony provided.
- 4.12 Recommend alternative approaches for future implementation of HAVA voter identification requirements. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on their analysis of available research and the results of Task 5.11, the Contractor shall diagnose the problems and challenges of voter identification and hypothesize alternative approaches. The Contractor shall coordinate with the EAC to identify appropriate policy objectives by which to assess these alternatives. The Contractor shall document and brief these alternatives to the Commission.
- 4.13 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 4.14 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.
- 4.15 Arrange one public hearing for receiving public comment on the draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the hearing.
- 4.16 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

Contract Type. The contract type will be Time and Materials with a ceiling of

6.0 Place of performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may be performed at the EAC offices.

7.0 Period of Performance. The period of performance is from date of award until October 28, 2005.

8.0 Schedule of Deliverables:

- Project plan – 10 days after contract award
- Progress reports – monthly
- Briefings – as required
- Analysis report on provisional voting - TBD
- Alternatives report on provisional voting – TBD
- Preliminary draft guidance on provisional voting - TBD
- Draft guidance on provisional voting for publication – 8/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on provisional voting for EAC adoption – 9/2005
- Analysis report on voter identification requirements – TBD
- Public hearing on voter identification requirements – TBD
- Summary of voter identification requirements hearing - TBD
- Alternatives report on voter identification requirements - TBD
- Preliminary draft guidance on voter identification requirements - TBD
- Draft guidance on voter identification requirements for publication – 9/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on voter identification requirements to EAC for adoption – 10/2005

REMAINING STANDARD CONTRACT TERMS TO BE PROVIDED.

Karen Lynn-Dyson/EAC/GOV

06/09/2005 03:10 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
bcc

Subject Revised Research update



Commissioners- Research plan June 9.doc

I understand that the Commissioners will consider this latest draft of the research plan at next Tuesday's meeting.

Enclosed please find the latest version in which approximately \$2.5 million in funds are appropriated. As always, this is a draft, working document from which to deliberate.

Regards-

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028750

**EAC Research Plan Update - June 9, 2005**

<b>Project</b>	<b>Possible Contractor</b>	<b>Product/Outcome</b>	<b>Anticipated Start Date</b>	<b>Anticipated End Date</b>	<b>Projected Cost</b>
Election Day Survey	EDS/Communications Firm TBD	EAC survey report with national coverage/distribution	February	July	\$175,000
NVRA Survey	EDS/Communications Firm TBD	EAC survey report with national coverage/distribution	February	June	
UOCAVA Survey	EDS/Communications Firm TBD	EAC survey report with national coverage/distribution	February	July	
NVRA Registration Form	EAC/AIGA Consortium	Revised form and instructions	May	September	\$75,000
Absentee Ballot Postage	Competitive RFP	EAC survey and report to Congress	June	December	\$200,000
Statewide Voter Registration Technology Refresh	National Academy of Sciences	Information sharing/community of learning about VR databases	March	Through November 2006	\$50,000
Ballot Design	AIGA Consortium	Best practices on EAC website and presentations at national and regional meetings	July/August	January 1, 2006	\$200,000
Hispanic Working Group	EAC	EAC agenda for outreach to Hispanic voters	July	September	\$20,000
Provisional Voting / ID requirements	Eagleton Institute / Moritz College of Law	EAC voluntary guidance on provisional voting and voter ID	June	December	\$600,000
Improving Election Data	Social Science Research Council	Improved methods for collecting election data, common understanding of election terms and statistics	July/August	December	\$150,000
Voter Fraud and Intimidation	TBD (consultant)	EAC definitions for voter fraud and voter intimidation	June	November	\$40,000
Vote Count and Recount	Competitive RFP	Best Practices on vote counts and recounts	July	December	\$200,000
Poll Worker Training	The Poll Worker Institute	EAC poll worker training materials	July/August	Through November 2006	\$150,000
Voter Information and Education	American Political Science Assn/Council for Excellence in Government	Town hall mtgs/Improved systems for delivering information to voters	August	Through November 2006	\$250,000
Election Administration Law Website	Competitive RFP	Clearinghouse of election law info	August	Through November 2006	\$300,000
Electronic Voting	National Academy of Sciences	EAC survey and report to Congress	July	November	\$100,000
<b>Total Projected Costs</b>					<b>\$2,510,000</b>

028151

Karen Lynn-Dyson/EAC/GOV  
06/27/2005 05:45 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject RE: Peer Review Group [REDACTED]

Tom-

Had a very good review and discussion of the PRG at this morning's Commissioner meeting.

Also, the Commissioners have marked their calendars for a conference call with the Eagleton/Moritz team on July 12 at 9:30 AM.

Several concerns were raised about the composition of the PRG and, after some discussion, I indicated that Eagleton will provide the EAC with a revised participant list, and with a more detailed description of the PRG's mission, goals, objectives, workplan and timelines for accomplishing its work.

The Vice Chair is concerned that there is not sufficient conservative representation on the PRG. I would suggest the team do more research to identify well-recognized conservative academics to put on the Group.

Further, the Commissioners recommend a tiered process in which the PRG will prepare a "dispassionate" analysis of the issues and draw some tentative conclusions. This analysis and these conclusions will then be vetted with a defined/select group of local election officials, and then, with a defined/select group of advocacy organizations.

It was also suggested that a final round of focus group meetings be held with a cross-section of these election officials, advocates and academics for an overall interactive reaction to the analysis and recommendations.

Hope this helps clarify concerns; I look forward to sharing your revisions to the PRG with them.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
06/23/2005 02:43 PM

To klynndyson@eac.gov  
cc  
Subject RE: Peer Review Group

028752



Thanks, Karen.

Tom

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Thursday, June 23, 2005 2:24 PM

**To:** tom [REDACTED]

**Subject:** Re: Peer Review Group

Tom-

I will be back to you early next week with EAC's feedback on this.

Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

We will get you additional names and reactions by mid-week next week.

Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Tom O'N [REDACTED]

06/22/2005 03:29 PM

To klynndyson@eac.gov

cc

Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG we submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and

028753

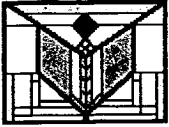
balanced.

Attached is a list of potential PRG members drawn from academia, the law, and non-profit organizations with interests in this area. Please look it over.

We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b) if so, who they should be. I'll keep you informed of our thinking as it develops.

Tom

028754



Adam Ambrogi/EAC/GOV

07/08/2005 12:09 PM

To Raymundo Martinez/EAC/GOV@EAC

cc

bcc

Subject Research Project ID

Tom mentioned you needed to provide him a potential name for the 'intimidation' side of the fraud/intimidation project. Do you have someone in mind, or do you want me to look into it on the 'net'?  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028755

Karen Lynn-Dyson/EAC/GOV

07/15/2005 04:16 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC  
bcc

Subject Fw: Eagleton Institute June 2005 Progress Report

Should any of you all need or want a sense of what Eagleton has done on provisional voting and voter identification in preparation for the Cal Tech meeting, attached is their June monthly report.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 07/15/2005 03:57 PM —



"Lauren Vincelli "  
<Vincelli@rutgers.edu>

07/14/2005 04:43 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc "Tom O'Neill [REDACTED]  
john.weingart@rutgers.edu

Subject Eagleton Institute June 2005 Progress Report

Ms. Dyson,

Attached please find the June 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please direct them to Tom O'Neill at: [REDACTED] or (908)794-1030.

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane  
New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237

028756

Fax: (732) 932-1551



ProgressReport\_JUNE2005\_EagletonInst.doc

028757



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**EAGLETON INSTITUTE OF POLITICS**

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
JUNE 2005**

**For**  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

July 14, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

028758

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from the start of the project on May 26 through June 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The objective of the contract is to assist the EAC in the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements on which to base policy recommendations as guidance for the states in the conduct of the 2006 elections. The work has begun well, thanks to the clarity of the EAC's expectations and the strong collaboration by the scholars and staff at the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, and the Moritz College of Law at the Ohio State University.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or (908) 794-1030.

028759

## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. The work plan provides for two months to complete Task 3.4. Work on this task is on schedule.

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

### LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team includes faculty, an executive administrator, a reference librarian, and several research assistants. It began immediately to compile statutes, case law and administrative procedures regarding Provisional Voting. The team has created a 50 state chart to summarize information on provisional voting. Categories for which state statutes and administrative procedures are being reviewed include:

- *When did the state create a system compliant with the HAVA provisional ballot requirements?*
- *Who may be eligible to cast a provisional ballot? and*
- *What is the process for discovering whether your provisional ballot was counted in the election?*

**Progress:** Initial research for 27 states, including the collection of provisional voting statutes is complete. This phase of the work is on schedule for completion by August 1. By the beginning of the week of July 11, Moritz's full time research assistant will move from voter identification research to gathering and organizing case law on provisional voting.

**Challenges:** Identifying the relevant statutes has been challenging; states use different terminology to codify provisional voting issues. Many states have scattered election law provisions throughout their codes. This variation from state to state makes creating a snapshot view across states a challenge. The team is meeting this challenge, and the work is on schedule.

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## PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team is constructing a narrative description for each state of the 50 states and the District of Columbia. It is also surveying a stratified random sample of county election officials to improve its understanding of actual practice in administering provisional voting.

**Description:** To construct the narratives, a researcher is examining newspaper accounts, state websites, and reports from third-party organizations to determine what information is publicly available about these issues during the 2004 election. To organize the information derived from this examination, we are creating an information system that will make it possible to catalog the basic information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combine it with Moritz's collection and analysis of statutes, regulations and litigation. The information system will make it possible to provide answers to such topics of particular interest listed in the contract as: How did preparation for provisional voting vary between states that had some form of provisional voting and those that did not?" and "How did litigation affect implementation?"

**Progress:** The researcher in this area has identified sources of information for every state and the collection process is well underway. Verified database entries for 24 states are complete, as are two state narrative summaries. This phase of the research is on schedule for completion by the end of July.

**Challenges:** A key challenge is determining just what states actually did in practice to verify and count provisional ballots. A second challenge has been determining the variations in policy within individual states. We are still wrestling with resolving this challenge, but the work is on schedule.

**Work Plan:** By the end of the July, the compilation of statutes, administrative regulations, and litigation will be complete and ready to be combined with the state-by-state narrative compiled by Eagleton. That will form the basis for the analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

## SURVEY OF COUNTY ELECTION OFFICIALS

This survey will help the research team understand more about such key topics of interest as:

- "How did the experience of provisional voting vary between states that previously had some form of provisional voting and those where provisional voting was new in 2004?"
- "Did state and local processes provide for consistent counting of provisional ballots?"
- "Did local officials have a clear understanding of how to implement provisional voting?"

The survey results will supplement the information on these topics from the compilation of statutes, regulations and cases and from the narrative we are constructing for each state.

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**Description:** The Center for Public Interest Polling (CPIP) at Eagleton is conducting a national survey of county election officials to measure several aspects of provisional voting. The survey is designed to determine the following factors related to provisional voting at the county level:

- The content and quality of instructions provided to county officials by the states
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting

**Progress:** The survey instrument is complete. CPIP has compiled a list of election officials at the county level and at the municipal or regional level for states that do not assign the election responsibility to counties. It was forwarded to the call center, Schulman, Ronca & Bucuvalas Inc., (SRBI) the week of July 5, 2005. A sample will be drawn the week of July 12. Human Subjects Approval from Rutgers University was granted July 12. Pre-notification letters will be sent to election officials around July 12-13, 2005. The EAC has reviewed a draft of this letter, which we have now revised to make clear that the survey will increase our understanding of the provisional voting process, but is not being conducted on behalf of the EAC.

**Challenges:** We made special efforts to expedite Human Subject Approval to meet the schedule in the work plan. In the absence of an existing, reliable database of local election officials, we had to create one especially for this project. In order to provide a valid comparison between the states new to provisional voting with those that previously had some form of provisional ballot we doubled the sample size from 200 to 400. This increase will require an increase in the budget for the survey from \$15,000 to about \$24,000. We intend to reallocate costs within the existing budget to make this improvement possible, and will submit a letter describing the reallocation to the EAC in mid-July.

The sample has been, and will continue to represent the biggest challenge in this survey. Compiling the sample required substantial coordination and research to determine the accuracy of the identity and contact information for potential respondents. The difficulty in determining the appropriate contact is attributed to variation in county election officials' titles, jurisdiction types, and state and county election structures across the country. In addition to the potential pitfalls of reaching the appropriate county official, another factor in actually making contact with this special population will be dependent upon the hours that they keep, and may be hindered by the summer season.

**Work Plan:** This questionnaire will be pre-tested by July 15, and will field July 18 through August 5, 2005. This is somewhat later than projected in the revised work plan, but the information will arrive in time to be considered in drafting the analysis and alternatives document required under Task 3.5.

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## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have made substantial progress in the first two tasks, which constitute the information-gathering phase of the work on Voter ID. The research of Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** A team of Election Law@Moritz faculty, executive administrator, a reference librarian, and several research assistants is compiling statutes on Voter Identification, and providing a summarized analysis of this research.

**Progress:** The Moritz team has created a 50-state chart to record data on voter identification. Categories for which state statutes and administrative regulations are being reviewed include: “*Who is required to present ID*”, “*Types of ID required*”, and “*Consequences of having no ID*”. We have completed the initial research for 45 states and have collected the voter identification statutes for those states. An *Election Law@Moritz* Fellow is conducting an academic literature review on voter identification. This literature review will help shape the analytical framework that will guide us when the compendium of statutes and administrative regulations is complete.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Projections:** At the current rate, a draft of the voter identification chart should be complete on schedule, by the end of July. Work on the literature review will continue into August, but will be available to inform the analysis of alternative approaches for voter identification called for by Task 3.12 of the contract.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter in the states; and second, estimating the effect on turnout of voter id requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to

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monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. This work is on schedule to be completed by the end of July. The next key milestones will be the completion of the state database and drafting the first narratives.

### **VOTER ID AND TURNOUT ANALYSIS**

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. Analysis on the county-level will enable us to estimate the influence of ID requirements on various age groups, races, ethnicities and gender groups. We are compiling data from both the 2000 and 2004 Presidential elections to measure the effect that changes in ID requirements may have had on voter turnout through two national election cycles.

**Progress:** The structure of the database is complete. It contains demographic information from the Census, and turnout data from various sources. The researcher assigned to this task is devising the syntax that will be required to run the statistics when the dataset is complete. The methodology for this part of the study is complete, and the actual data collection will soon be finished.

**Projection:** We are waiting for the Census Bureau to release the 2004 County Demographic Estimates. We have ordered and await the arrival of 2 datasets that contain voter turnout and voter registration numbers on the county-level for both the 2000 and 2004 elections. Once these two sources of information are received, the researcher will insert this information into the existing database, clean up the dataset, and begin to run the statistics. By that point, the researcher will have separated the states into various ID-requirement groupings that have been determined by the team, which will require coordination with several other parts of the study. This work is on schedule. By the end of July, the researcher should have county-level and state-level statistics on the impact of each ID system upon turnout, analyzed through various demographic features on the county-level.

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### Task 3.11 Public meeting on Voter Identification Requirements

**Description:** We are working closely with EAC staff, particularly the General Counsel, to plan a half day public meeting on Voter ID requirements. Presentations at the meeting will form an important part of the information we are compiling about Voter ID requirements and the strengths and shortcomings of a range of alternative approaches.

**Progress:** We have recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we have recommended that one panel include legislators on opposite sides of the issue from two different states. Our research identified Mississippi and Wisconsin as two states to focus on, and we have recommended specific legislators from each. We have discussed with staff adding a researcher to the panel to put the debate in Wisconsin and Mississippi in either a national or historic context. We also recommended two researchers from contrasting points of view, to address the effects of Voter ID provisions under HAVA and broader provisions that are now the subject of national debate. EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA. We are awaiting a decision on our recommendations from EAC staff. We have no reason not to believe that the work is on schedule to be completed in time to organize a productive meeting on July 28.

**Challenges:** The date and location of this hearing has been changed twice since the beginning of the project. It was originally scheduled to take place in late June, but was rescheduled for July to allow the June hearing to focus on voting machine technology. The regular meeting was rescheduled for July 26 in Minneapolis, and was recently changed to July 28 in Pasadena. The changes in the scheduling of the July meeting have complicated our choice of panelists. More seriously, the changes mean that information from the hearing will not be available as early in the research process as contemplated in the contract. This timeframe will now require the team to summarize the hearing events at the same time that we are drafting the analysis and alternatives paper in early August.

Additionally, while our contract states that the "Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC," we have been asked only to make recommendations of topics and panelists, and the arrangements for the organization of the hearing are in other hands. This lack of clarity has caused some confusion and has delayed invitations to panelists. Thanks to frequent communication with members of the EAC, the process now seems to be working smoothly.

**Projection:** We believe the work is on schedule for completion in time to recruit the panelists for the July 28 hearing. Preparation of the hearing summary will likely be delayed because of the need to complete the analysis and alternatives paper.

028765

## PROJECT MANAGEMENT

Immediately after announcement of the award of the contract, Eagleton and Moritz began supplementing the core group that had prepared to proposal to building a highly qualified team to undertake the work. That team was in place by mid June, just a few weeks after the contract award.

As described in the proposal, the direction of the project is the responsibility of a five-person committee of faculty and staff from Eagleton and Moritz, chaired by Dr. Ruth Mandel, Director of the Eagleton Institute of Politics. Project Director Thomas O'Neill, a consultant to Eagleton, reports to this team and provides day-to-day guidance and coordination for the research. A weekly meeting of all the researchers engaged in the project is the primary means of coordinating the work. We have recently added an internal website to facilitate the review and revision of written materials.

### Task 3.1 Update the Work Plan

The first task was completed on time with the submission of a detailed work plan and timeline. EAC staff requested that the work plan be supplemented with a Gantt chart created on MS Project, and we submitted that a few days later.

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

**Progress:** Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded, as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations should be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We answered with an analysis of the cost and time involved adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. We have not received response on this correspondence from the EAC, and the recruitment of the group is on hold.

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**Challenges:** Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

**Projections:** We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

#### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

**Challenges:** There are no evident challenges to this task at this time.

**Projections:** By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

#### INTRANET

**Description:** A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

**Progress:** After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28<sup>th</sup> meeting to publish the Intranet through [www.intranets.com](http://www.intranets.com),

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one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

**Challenges:** There are no immediate challenges to completion of this task by the timeframe specified below.

**Projections:** Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.

#### **FINANCIAL REPORT**

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

028768



Karen Lynn-Dyson/EAC/GOV  
07/21/2005 01:35 PM

To "Job Serebrov"  
[REDACTED]@GSAEXTERNAL  
cc Thomas R. Wilkey/EAC/GOV@EAC  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: project [REDACTED]

Job-

I write to see if you might be available to come to Washington on Monday, August 1 to meet with several EAC staff and Commissioners to discuss the voter fraud/voter intimidation project and your possible work as a consultant on the project.

I'd like to schedule this 1-2 hour meeting for sometime between 1 and 3 in the afternoon.

Might you be available to come to Washington for this ?

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028769

Karen Lynn-Dyson/EAC/GOV

07/26/2005 01:30 PM

To Sheila A. Banks/EAC/GOV@EAC, Adam  
Ambrogio/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Conference call to "interview" potential voter  
fraud/intimidation consultants

Hi All-

Well, I have the unhappy task of trying to identify a date and time when we might schedule a series of conference calls with the consultants we've identified as possible candidates to work on the voter fraud/intimidation project.

Since August is impossible and horrible in terms of everyone being in the same place, I thought it might be easier to try and schedule three calls--one hour each in duration-- in which the Commissioners could talk to these candidates.

I'd like to "start the bidding" for the week of August 15.

Actually, I happen to know that all of the candidates could be available August 22 or 23 at some point in the day.

Let me know if your folks could be available by phone at any of these days and times:


Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028770

Karen Lynn-Dyson/EAC/GOV  
07/26/2005 04:58 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC, Sheila A.  
bcc  
Subject Re: Conference call to "interview" potential voter  
fraud/intimidation consultants 

Mea culpa-

Well, you can take this off of your to-do list.

Tom Wilkey and I will be meeting with the consultant and doing the interviewing. We will keep the Commissioners apprised of our progress on this project.

Thanks all-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028771

Karen Lynn-Dyson/EAC/GOV  
08/01/2005 06:12 PM

To "Tom O'Neill" [REDACTED]>@GSAEXTERNAL  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC  
bcc  
Subject RE: Meeting with EAC [REDACTED]

Tom-

I will be in touch shortly with possible dates in very late August or early September, when EAC staff might be available to meet with Eagleton to discuss the project's research results and next steps.

In the meantime, I thought it was important to follow up on the issues Vice Chair DeGregorio raised while we were in Pasadena.

To be certain that I have the latest information, could you send to me the final list of the Eagleton/Moritz Peer Review Group and the list of organizations that Eagleton will be contacting for input?

Regards-

Karen

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028772

Karen Lynn-Dyson/EAC/GOV

08/02/2005 05:00 PM

To "Tom O'neill" <[REDACTED]>@GSAEXTERNAL

cc Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Thomas R.

bcc

Subject RE: Meeting with EAC [REDACTED]

All-

Could you let me know your availability to meet on September 5,6 or 7, say at 1:00 PM, with the Eagleton/Moritz team, to go over their research thus far, and next steps.

Thanks for your input.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'neill" [REDACTED]



"Tom O'neill"

[REDACTED]  
07/29/2005 01:32 PM

To klynndyson@eac.gov

cc

Subject RE: Meeting with EAC

Karen,


Thanks for the email. No need to resend the original email from Washington. I received that shortly after you sent it. That email let us know that EAC would not need the research on ballot design that Tom Wilkey suggested we undertake and that you asked us to submit a proposal for. But the ballot-design issue was only one of the two topics raised by my email to you. The other question concerned a date to meet with EAC staff to discuss the forthcoming draft of our Analysis and Alternatives paper and an outline for the Preliminary Guidance Document. From our conversation yesterday, I understand that August 26, the date suggested, will not work because of the EAC's travel schedule. Please let me know if August 30, 31 or September 1 are possible for a meeting between the project team and EAC in Washington. The meeting would require perhaps 2 hours.

Tom O'Neill

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

028775

Karen Lynn-Dyson/EAC/GOV  
08/04/2005 05:26 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
bcc  
Subject RE: Meeting with EAC 

Tom O'Neill-

I'd like to propose the Eagleton/Moritz meeting for September 6 at 1:00 PM at the EAC's offices.



If that date works, please be certain to reply to all on this e-mail, as I will be out of the office.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
08/02/2005 05:00 PM

To "Tom O'Neill" @GSAEXTERNAL  
cc Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject RE: Meeting with EAC 

All-

Could you let me know your availability to meet on September 5,6 or 7, say at 1:00 PM, with the Eagleton/Moritz team, to go over their research thus far, and next steps.

Thanks for your input.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>

028775

Karen Lynn-Dyson/EAC/GOV

08/15/2005 04:43 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC  
cc Raymundo Martinez/EAC/GOV@EAC

bcc

Subject Fw: Eagleton Institute of Politics - July 2005 - Monthly  
Progress Report

FYI-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/14/2005 04:42 PM —



"Lauren Vincelli"  
<Vincelli@rutgers.edu>

08/15/2005 03:01 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc "Tom O'Neill" [REDACTED],  
rmandel@rci.rutgers.edu, john.weingart@rutgers.edu

Subject Eagleton Institute of Politics - July 2005 - Monthly Progress  
Report

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at: [REDACTED] or (908)794-1030.

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive at your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane

028778

New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237  
Fax: (732) 932-1551



ProgressReport\_JULY2005\_EagletonInst.pdf





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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
JULY 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

August 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

777870

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or (908) 794-1030.

028778

## **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

### **LEGISLATION, REGULATIONS, AND LITIGATION**

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

**Progress:** The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

**Challenges:** The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

### **PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING**

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

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## PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** The state-by-state database is complete, as is a first draft of all state narratives. This work has been shared with the larger team and is being reviewed currently in preparation for constructing analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

**Work Plan:** In the next month, revisions of the narratives will be complete. In addition to this research, we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms.

## SURVEY OF COUNTY ELECTION OFFICIALS

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting. The survey was designed to determine the following factors related to provisional voting at the county (or equivalent election jurisdiction) level:

- The content and quality of instructions provided to county officials by the states;
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting.

**Progress:** The fielding and initial analysis of the survey results are complete.

**Work Plan:** The information derived from the survey will be considered in drafting the analysis and alternatives document required under Task 3.5.

028780

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have completed tasks 3.10 and 3.11. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The chart created to collect data on voter identification is complete and is now being reviewed. Voter identification statutes are being collected.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** Review of the voter identification chart, the collection of the voter identification statutes, and the writing of the state by state summaries will be completed by the end of August.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of voter ID requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern

028781

with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

### **VOTER ID AND TURNOUT ANALYSIS**

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. It also contains exit poll data from the 50 states, providing demographic data of voter turnout. The analysis of that data is well underway.

**Challenges:** The initial methodology that was devised to investigate the questions involved in this part of the study proved insufficient, as the necessary data was unobtainable (the Census Bureau has not yet released their 2004 data). After re-developing an appropriate methodology, the necessary data has been assembled, we have resumed the analysis of this data.

**Projection:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-August.

### **Task 3.11 Public meeting on Voter Identification Requirements**

**Description:** In early July, we continued our efforts to identify specific Voter ID topics or issues and panelists who could shed light on them. We recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we recommended that one panel include specific legislators on opposite sides of the issue from two different states, Mississippi and Wisconsin. We also discussed adding a researcher to the panel in order to place the debate in a national or historical context. We also recommended a panel of two academic researchers with contrasting points of view, to address the effects of Voter ID provisions under HAVA. In response to our suggestions, EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA.

By mid-July, the EAC had decided which topics and speakers should be invited, however most of those speakers proved unable to attend.

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**Progress:** Tom O'Neill and Dan Tokaji attended the EAC Public Meeting held in Pasadena on July 28. Their presentations at the meeting described the progress of the research and our developing perspective on how to assess the quality of the provisional voting process in the states and identify possible steps for improvement.

**Challenges:** The changes in the scheduling of the July meeting delayed and ultimately made it impossible to assemble a panel, from which we could derive substantive insight into voter identification issues as they are playing out in the states. Additionally, due to the date of the hearing, the information from the hearing was not available as early in the research process as contemplated in the contract.

**Projection:** Preparation of the hearing summary will likely be delayed, due to the team's focus on preparation of the analysis and alternatives paper.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

**Progress:** Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded that as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations might be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to the EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We provided an analysis of the cost and time involved in adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. In the end, the EAC determined that Eagleton should appoint a balanced Peer Review Group of its own choosing. Initial phone calls were made to all members of that group by the end of July, and written invitations and descriptions of the process have gone to all possible members who had indicated their interest in serving.

**Challenges:** Communications on this issue with the EAC were not clear or timely. The purpose of the PRG is to review our work, and to comment on our research design, which is well underway. We had planned to have the PRG in place early enough in the project to enable them to provide feedback, including the research design. While we are

028783

confident in the quality of our work, the experience and perspective of the Peer Review Group will strengthen our analysis and recommendations as we find a way to receive its critique in the more limited time now available. The delay in creating the Peer Review Group will result in a delay in the completion of the final draft of the analysis and alternatives paper and in the preliminary guidance document.

**Projections:** The work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** The Moritz team has provided Eagleton staff with all completed work. An Eagleton staff member reviews the content and formats of data from all supporting research and will (re-)format once the work has been completed for the compendium and reports submitted to the EAC. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

**Projections:** By the end of July 2005, much of the above referenced research has been completed. The entire project team has begun the process of reviewing all work, and will combine and format all documents and materials in preparation for our final reporting to the EAC.

### INTRANET

**Description:** All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

**Progress:** Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

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## FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

028785

Karen Lynn-Dyson/EAC/GOV

08/16/2005 01:39 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Juliet E. cc Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Fw: Sept 6th EAC meeting

Commissioners-

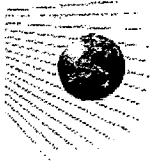
As mentioned in this morning's meeting, Eagleton/Moritz project staff are scheduled to come to Washington in early September to brief EAC staff on the project's progress to date.

Let me know if you would like to attend or if you will send someone in your place.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/15/2005 01:34 PM —



Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV

08/16/2005 11:51 AM

To tom\_oneill@verizon.net

cc Karen Lynn-Dyson/EAC/GOV@EAC

Subject Sept 6th EAC meeting

Mr. O'Neill,

Just a quick note to remind you that your meeting with EAC is confirmed for September 6 at 1 p.m. in Washington. The purpose of this meeting will be to review the draft of your analysis and alternatives paper with EAC and discuss the outline and direction of the Preliminary Guidance Document.

Regards,

Nicole K. Mortellito  
Assistant to the Executive Director - Thomas R. Wilkey  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.3114 phone  
202.566.3127 fax

028786

Karen Lynn-Dyson/EAC/GOV  
08/19/2005 03:41 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: Peer Review Group [REDACTED]

Tom-

Thank you for sharing this list of your Peer Review Group members, to-date. I will share this list with the Commissioners and will be certain to let your know of their feedback, if any.

I will also be back in touch regarding Eagleton's research around voter fraud and the research project EAC will be undertaking, this fall, around voting fraud and voter intimidation. The EAC is presently in the process of finalizing a work and staff plan for this project and once it is completed, I will be certain to brief you on it.

In the meantime, EAC staff and several of the Commissioners looks forward to meeting with the Eagleton/Moritz team on September 6 at 1:30 PM.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
08/19/2005 02:20 PM

To klynndyson@eac.gov  
cc  
Subject Peer Review Group

Karen,

Attached is a report on the status of recruitment of members of the Peer Review Group. We extended 9 invitations. We have four confirmed members, one reluctant turn-down, one who has yet to respond to an initial inquiry, and are awaiting confirmation from 3 others who initially agreed. Please let me know if you need additional information.

Tom O'Neill



RecruitmentStatus.doc

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**STATUS OF PEER REVIEW GROUP RECRUITMENT**

(As of August 17, 2005)

<b>R. Michael Alvarez, Ph.D.</b> Professor of Political Science California Institute of Technology	<b>YES/CONFIRMED</b>
<b>Guy-Uriel Charles</b> Associate Professor, School of Law University of Minnesota 612-626-9154	<b>YES</b>
<b>Brad Clark</b> Professor of Law George Washington University School of Law	<b>NO</b>
<b>Pamela Susan Karlan</b> Montgomery Professor of Public Interest Law Stanford Law School 650-725-4851	<b>YES</b>
<b>Martha E. Kropf, Ph.D.</b> Assistant Professor of Political Science University of Missouri-Kansas City 816-235-5948; KropfM@umkc.edu	<b>YES/CONFIRMED</b>
<b>Daniel H. Lowenstein</b> Professor of Law UCLA 310-825-4841	<b>YES</b>
<b>John F. Manning</b> Professor Harvard Law School	<b>NO RESPONSE</b>
<b>Tim Storey</b> Program Principal Legislative Management Program National Conference of State Legislatures	<b>YES/CONFIRMED</b>
<b>Peter G. Verniero, Esq.</b> Counsel Sills, Cummis, Epstein and Gross, PC (Former NJ Attorney General and Supreme Court Justice)	<b>YES/CONFIRMED</b>

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028788

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

09/19/2005 01:05 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
cc Sheila A. Banks/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC  
bcc

Subject Fw: August Progress Report - Eagleton Institute of Politics

Commissioners-

FYI-

Eagleton's August progress report.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/18/2005 01:02 PM —



"Lauren Vincelli"  
<Vincelli@rutgers.edu>

09/15/2005 12:04 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc [REDACTED] jdobrich@eden.rutgers.edu

Subject August Progress Report - Eagleton Institute of Politics

Hi Karen,

Attached is the August progress report in fulfillment of our Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures. Please note, as per your instructions earlier this month, that the financial report will be sent via Fedex under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC. Also attached to the progress report is a finalized list of our Peer Review Group members. If you have any questions regarding this report, please contact Tom O'Neill at (908) 794-1030 [REDACTED]

Have a great day,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane  
New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237  
Fax: (732) 932-1551

028789



Progress Report\_AUGUST2005\_EagletonInst.pdf

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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
AUGUST 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION'**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

September 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

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**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from August 1 through August 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

Research on Provisional Voting and a draft of reports on the analysis and alternatives were substantially completed in preparation for the September 6 briefing for the EAC. Important reports such as the National Survey of Local Election Officials' Experience with Provisional Voting; Statistical Review Provisional Voting in the 2004 Election; State-by-state Narrative of Developments in Provisional Voting; and the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states, were all completed in August.

We made further progress on recruiting a balanced and authoritative Peer Review Group (which, as this report is written, is receiving all the documents listed above for review). Ingrid Reed of Eagleton will coordinate the work of the Peer Review Group. A list of the members of the Peer Review Group is attached.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to Tom O'Neill at: [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or (908) 794-1030.

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## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, and Task 3.5 is well underway.

**Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of provisional voting and develop alternative means to achieve the goals of provisional voting.**

### LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and is near completion with this research.

**Progress:** We completed the state by state summaries of provisional voting in August. Also complete is a memorandum outlining provisional voting legislative changes since the 2004 election. This material was sent to the EAC as part of the package for briefing on September 6.

**Challenges:** The variety in the form and frequency of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The analysis of all the information, data, and survey results concerning provisional voting data will be completed in September, on schedule. The alternatives document should also be complete in September, pending response from the EAC on which direction those alternatives should follow.

### PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. The report findings from the survey of 400 local election officials is now complete. The survey results improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

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### PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** A state-by-state narrative of developments in Provisional Voting is complete and has been distributed to the EAC and the Peer Review Group. This work has been crucial to the process of constructing our draft analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

**Challenges:** The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent multiple revisions in order to incorporate the most up-to-date material available. Had the Election Day Study been available, this task would probably have been simplified considerably.

**Work Plan:** We completed revisions of the narratives.

### SURVEY OF COUNTY ELECTION OFFICIALS

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting.

**Progress:** The analysis of the survey results and findings report are complete.

**Work Plan:** We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5.

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## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting, and is becoming the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** We are refining the 50 state (plus District of Columbia) chart of data on voter identification. So far collected are voter identification statutes for 35 states. Summaries of the existing voter identification statutes have been written for forty states.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The state by state voter identification statute summaries will be completed for the remaining ten states and D.C. and the review of the chart will be completed. Analysis of voter identification data will begin.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern, and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with

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increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

#### VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout. The analysis of that data is underway.

**Challenges:** The main challenges to this task include gathering the complete set of changes to Voter ID laws over the past 5 years, and then incorporating those changes into a sound statistical methodology.

**Projection:** We will continue to work towards resolving the methodology issue, and ultimately produce a final report on this subject. The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-September.

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## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The Peer Review Group will review our research and methodology and provide valuable feedback and suggestions for the direction of our work.

**Progress:** The composition of the Peer Review Group has been determined and the membership has been submitted to the EAC. Additionally, as of the date of this report all PRG members have received their first mailing, which included several reports from our research, and a draft of our analysis and alternatives outline for their review.

**Challenges:** Our timeline for circulating and discussing our research with the PRG has been compromised due to delays in completing the recruitment of members of the group.

**Projections:** We are in the process of scheduling our first conference call with PRG members for the week of Sept. 19, 2005.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. As we near the end of the Provisional Voting research and move into the Voter Identification research, we will re-evaluate the volume of files contained in the Information System and update the system.

**Projections:** The entire project team continues to review all project drafts, and will staff members combine and format all documents and materials in preparation for our final reporting to the EAC.

### **INTRANET**

**Description:** All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

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**Progress:** Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

## FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project August 1 - August 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC .

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**ATTACHMENT:  
PEER REVIEW GROUP  
FINAL LIST (09/13/05)**

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**Tim Storey**

Program Principal  
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Tel: (973) 643-7000

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Karen Lynn-Dyson/EAC/GOV  
09/27/2005 03:40 PM

To Vincelli@rutgers.edu, Juliet E. Thompson/EAC/GOV@EAC,  
Adam Ambrogi/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Thomas R.  
cc arapp@rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, foley.33@osu.edu,  
ireed@rutgers.edu, [REDACTED]  
bcc

Subject Re: EAC Conference Call - Friday 9/30 

Eagleton/Moritz team-

I'd leek to propose a conference call with EAC Commissioner Martinez, General Counsel ,Julie Thompson, Research Manager Karen Lynn-Dyson and your team for either **10:30 or 1:30 on Friday, September 30.**

This will be to discuss the draft guidance and final report you will be producing for the EAC.

Please let me know which time works for you

Regards  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028800





"John Weingart"  
<john.weingart@rutgers.edu>

09/27/2005 03:56 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc Vincelli@rutgers.edu, jthompson@eac.gov,  
aambrogi@eac.gov, rmartinez@eac.gov, twilkey@eac.gov,  
arapp@rutgers.edu, davander@eden.rutgers.edu,

bcc

Subject Re: EAC Conference Call - Friday 9/30

Karen - Let's do it on Friday at 1:30. From my initial polling, at least Tom O'Neill, Ingrid Reed and I will be available. Since we will not all be at the same location, would you like us to initiate a conference call from here and give you a number to call in to?

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

klynndyson@eac.gov wrote:

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Karen Lynn-Dyson/EAC/GOV  
09/27/2005 04:49 PM

To john.weingart@rutgers.edu  
cc aambrogi@eac.gov, arapp@rutgers.edu,  
davander@eden.rutgers.edu, dlinky@rci.rutgers.edu,  
foley.33@osu.edu, ireed@rutgers.edu, iwreed@aol.com,  
bcc  
Subject Re: EAC Conference Call - Friday 9/30

Excellent-

Friday at 1:30 it is.

Please do let the EAC staff know what number to call. Ray Martinez and Tom Wilkey may be calling from the road. Julie Thompson and I will be here.

Thanks, again

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
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"John Weingart"  
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09/27/2005 03:56 PM

Please respond to  
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To klynndyson@eac.gov  
cc Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov, rmartinez@eac.gov,  
twilkey@eac.gov, arapp@rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu,  
foley.33@osu.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu,  
lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu, tokaji.1@osu.edu,  
"Tom O'Neill" <vincelli@rci.rutgers.edu, williams.285@osu.edu

Subje Re: EAC Conference Call - Friday 9/30  
ct

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Karen Lynn-Dyson/EAC/GOV  
09/28/2005 04:11 PM

To john.weingart@rutgers.edu, Raymundo  
Martinez/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Adam  
cc  
bcc  
Subject Re: EAC Conference Call - Friday 9/30

Thanks for passing on the call-in information. We look forward to speaking with the team then.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>



"John Weingart"  
<john.weingart@rutgers.edu>

09/28/2005 04:01 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov  
cc  
Subject Re: EAC Conference Call - Friday 9/30

Karen - For our conference call this Friday at 1:30, participants should dial (877) 805-0964 and then when prompted enter: 869580#. Could you relay this information to Commissioner Martinez and the others from the EAC who will be on the call. At our end will be Tom O'Neill, Ingrid Reed and me.

Thanks, John

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

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> Karen Lynn-Dyson  
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> 1225 New York Avenue , NW Suite 1100  
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> \*"John Weingart" <john.weingart@rutgers.edu>\*>  
> 09/27/2005 03:56 PM  
> Please respond to  
> john.weingart@rutgers.edu  
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> To  
> klynndyson@eac.gov  
> cc  
> Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov,  
> rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu,  
> davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu,  
> ireed@rutgers.edu, [REDACTED], joharris@eden.rutgers.edu,  
> lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu,  
> tokaji.1@osu.edu, "'Tom O'Neill'" <[REDACTED]>  
> vincelli@rci.rutgers.edu, williams.285@osu.edu  
> Subject  
> Re: EAC Conference Call - Friday 9/30  
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> > be producing for the EAC.  
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02880E

Karen Lynn-Dyson/EAC/GOV

To Raymundo Martinez/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC

09/29/2005 02:42 PM

cc

bcc

Subject Fw: EAC Conference Call - Friday 9/30

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/28/2005 02:41 PM -----



"John Weingart"  
<john.weingart@rutgers.edu>

To klynndyson@eac.gov

09/28/2005 04:01 PM

cc

Please respond to  
john.weingart@rutgers.edu

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> tel:202-566-3123

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>  
> \*"John Weingart" <john.weingart@rutgers.edu>\*

>  
> 09/27/2005 03:56 PM  
> Please respond to  
> john.weingart@rutgers.edu  
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> To  
> klynndyson@eac.gov

> cc  
> Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov,  
> rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu,  
> davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu,  
> ireed@rutgers.edu, ██████████, joharris@eden.rutgers.edu,  
> lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu,  
> tokaji.1@osu.edu, "'Tom O'Neill'" ██████████  
> vincelli@rci.rutgers.edu; williams.285@osu.edu

> Subject  
> Re: EAC Conference Call - Friday 9/30  
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>> Karen Lynn-Dyson  
>> Research Manager

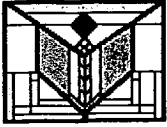
028808



> > U.S. Election Assistance Commission  
> > 1225 New York Avenue , NW Suite 1100  
> > Washington, DC 20005  
> > tel:202-566-3123

>  
>  
>

028809



Adam Ambrogi /EAC/GOV  
09/29/2005 05:23 PM

To Keith.Abouchar@mail.house.gov  
cc  
bcc  
Subject EAC Contracts

Keith,

Hope you're well. Ray told me you were able to catch up on the array of exciting events here at the EAC. I wanted to pass along a 'marked up' copy of the contracts we approved for the end of the Fiscal Year. If you have any questions about the substance of the contracts, pls let me know. Take care.

Adam



EAC Contract FY2005.pdf

---

Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

02881C

## EAC CONTRACT SUMMARY

Subject	Vendor	Cost	End Date
✓ Indirect rate negotiation assistance	KPMG, LLP	\$276,960.	September 2006
✓ Website maintenance	Humanitas	\$120,000.	September 2006
✓ Vote count, recount	University of Utah	\$257,350.	September 2006
✓ Voter registration database technology assistance	National Academy of Sciences	\$650,000.	September 2007
✓ Polling place signage, ballot design, revised NVRA form	AIGA Design for Democracy	\$681,400.	September 2006
✓ Legal clearinghouse	Center for Governmental Responsibility, U. of Florida Levin College of Law	\$224,737.	February 2007
✓ Election management guidelines	National Association of State Election Directors, Connie Schmidt & Associates, Dr. Britain J. Williams, III	\$352,000.	December 2006
✓ Voter roundtables	Council for Excellence in Government	\$300,212.	September 2006
✓ Poll worker (non-college) recruitment	International Foundation for Election Systems	\$378,310.	December 2006
✓ College poll worker recruitment	Center for Election Integrity, Cleveland State University	\$346,615.	December 2006
✓ Public access portal research	Publius.org	\$285,226.	September 2006
✓ Voter hotline research	InfoVoter Technologies	\$217,105.	June 2006
✓ EAC records management procedures	Zimmerman Associates	\$ 80,381.	June 2006
✓ Voter fraud, voter intimidation	Tova Wang, Job Serebrov	\$ 110,000.	March 2006

028811



"Tova Wang"  
<wang@tcf.org>  
10/06/2005 11:39 AM

To aambrogi@eac.gov  
cc  
bcc

Subject October 28 meeting

History:  This message has been replied to.

Hi Adam,

It was great meeting you at the UDC Law Symposium last week. I wanted to let you know that we are having a meeting about the voter fraud and intimidation meeting at 10 AM on October 28 at the EAC, and it would be great if you and Commissioner Martinez could be there. Let me know, and let's stay in touch. Thanks so much.

Tova

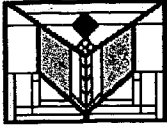
**Tova Andrea Wang**  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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---

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028812



Adam Ambrogi/EAC/GOV

10/06/2005 12:00 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

bcc

Subject Re: October 28 meeting

Tova:

I was about to email you as well. It was certainly good to meet you last week, as I've heard about your work through numerous sources, and am glad we have finally been able to chat. As with many things (we started to discuss), the EAC is doing a lot of these projects for the first time. And unlike a thinktank, or nonprofit, we are constrained in a number of ways, and there are "sensitivities" that exist. Of course, there are benefits to not being a nonprofit, as well.

I'll state that at least myself, but hopefully Cmsr. Martinez will be at the kickoff meeting. You may do this already, but I would attempt to lay out the ideal structure for your involvement in the contract, and perhaps communicate this to Karen and the other contractor immediately before the meeting. That will frame this contract structure (beyond the terms of the agreement) to your liking.

Obviously a suggestion. However, I think that the goal is good, efficient research that is unimpeachable in partisan or methodological grounds--that will then be submitted to the Commission for its approval (and actually getting its approval).

Feel free to call me anytime. If you're in DC before then, and have some time, let's get Cmsr Martinez, you and I together for lunch or coffee.

Best,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>

10/06/2005 11:39 AM

To aambrogi@eac.gov

cc

Subject October 28 meeting

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028813

Tova

**Tova Andrea Wang**  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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028814



"Tova Wang"  
<wang@tcf.org>  
10/06/2005 12:04 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: October 28 meeting

History: This message has been replied to.

Adam,

Just to make sure we're talking about the same thing, I'm actually not going to be at the "kick-off" on the 14th. This is a meeting just about our project on the 28th. The project is already underway and the contracts finalized.

Since the meeting I refer to on the 28th is from 10-12, is there any possibility of the three of us having lunch after that?

Tova

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

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]

**Sent:** Thursday, October 06, 2005 11:01 AM

**To:** wang@tcf.org

**Subject:** Re: October 28 meeting

Tova:

I was about to email you as well. It was certainly good to meet you last week, as I've heard about your work through numerous sources, and am glad we have finally been able to chat. As with many things (we started to discuss), the EAC is doing a lot of these projects for the first time. And unlike a thinktank, or nonprofit, we are constrained in a number of ways, and there are "sensitivities" that exist. Of course, there are benefits to not being a nonprofit, as well.

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Best,  
Adam

-----  
Adam D. Ambrogi

02881E

Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Tova Wang" <wang@tcf.org>

10/06/2005 11:39 AM

To aambrogi@eac.gov  
cc  
Subject October 28 meeting

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Tova Andrea Wang  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

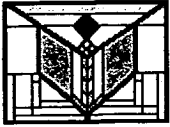
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028816





Adam Ambrogi/EAC/GOV

10/06/2005 12:51 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

bcc

Subject RE: October 28 meeting 

Let's put it down as a tentative. I'll talk to him in a bit and finalize. There will be so many folks at the 14th meeting that I don't see that as an official 'kickoff.'

Thanks-  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>

10/06/2005 12:04 PM

To aambrogi@eac.gov

cc

Subject RE: October 28 meeting

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

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]

**Sent:** Thursday, October 06, 2005 11:01 AM

**To:** wang@tcf.org

**Subject:** Re: October 28 meeting

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028817

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Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Tova Wang" <wang@tcf.org>

10/06/2005 11:39 AM

To aambrogi@eac.gov  
cc  
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Tova

028818

Tova Andrea Wang  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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028819

Karen Lynn-Dyson/EAC/GOV

To Adam Ambrogi/EAC/GOV@EAC

10/18/2005 04:36 PM

cc

bcc

Subject Fw: Requested Documents

History: This message has been forwarded.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:35 PM —

Karen Lynn-Dyson/EAC/GOV

To aimee sherrill

10/18/2005 04:24 PM

cc

Subject Fw: Requested Documents

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:23 PM —



"Job Serebrov"

<[REDACTED]>

To "Karen Lynn Dyson" <klynndyson@eac.gov>

08/19/2005 12:16 PM

cc

Subject Requested Documents

Karen:

Here are the documents that you requested.

Regards,



Job ResumeReg.doc Summary of Election Activities

028820

# **JOB SEREBROV**

2110 S. Spring St.  
Little Rock, AR 72206  
501.374.2176 (H)  
501.324.7330 (O)  
serebrov@sbcglobal.net

## **LEGAL**

### **PRACTICE:**

**Law clerk to Judge Lavenski R. Smith, U.S. Court of Appeals for the Eighth Circuit; 425 West Capitol Ave., Ste. 3110, Metropolitan Bank Bldg., Little Rock, Arkansas 72201**

Supervisor: Judge Lavenski R. Smith, 501.324.7310  
Hours per week: 40+Dates of employment: August 2004-August 2005

Job duties: Legal research for cases assigned monthly by the judge, drafting of case memorandums and opinions, review of administrative panel and death penalty appeals and attendance at oral argument when required

### **Private practice of law**

Supervisor: Self  
Hours per week: 40+Dates of employment: April 1991 - December 1998, May 1999 - July 2004

**Associate attorney, The Nixon Law Firm; 2340 Green Acres Road, Ste. 12, Fayetteville, Arkansas 72703**

Supervisor: David Nixon, 479. 582.0020  
Hours per week: 40+Dates of employment: December 1998-April 1999

### Areas of legal practice:

- Federal and state voting issues and election law
- Federal and state civil and criminal appeals and habeas petitions
- Discovery, trial preparation, trial briefs, trial strategy
- Legislative drafting and review
- Legislative and regulatory advocacy
- Initiatives and referendums
- Administrative law
- Constitutional law
- Legal research and writing
- Election consulting for federal and state candidates
- International development projects

028821

**Special Law Clerk, Judge Jay Finch, Nineteenth Judicial Circuit West, Division 3, 203 East Central, Bentonville, AR 72712**

Supervisor: Judge Jay Finch, 479.271.1020  
Hours per week: varied Dates of employment: December 1998-January 1999

Job duties: research and writing, attendance at hearings, drafting of the opinion

**BAR**

**ADMISSIONS:**

FEDERAL

- U.S. Supreme Court
- U.S. Court of Appeals for the following circuits: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, D.C., and Federal
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of Federal Claims
- U.S. Court of International Trade

STATE

- Supreme Court of Oklahoma (1991)
- Supreme Court of Nebraska (1992)
- Supreme Court of Arkansas (1994)

LEGAL

ASSOCIATIONS

- Oklahoma Bar Association
- Nebraska Bar Association
- Arkansas Bar Association
- Inter-American Bar Association

**BAR**

**ACTIVITIES:**

**Chairman/Founder, Appellate Practice Committee, Arkansas Bar Association, Little Rock, Arkansas, 1993-1996**

**Member, Drafting Committee, Appeals in Arkansas, Arkansas Bar Association, Little Rock, Arkansas, 1996**

**PUBLICATION:**

- "Arkansas Appellate Motion Practice" in *Handling Appeals in Arkansas*, Arkansas Bar Association, 1996

**LEGISLATIVE**

**EXPERIENCE:**

**Senior consultant, AfricaGlobal, Inc., Washington, D.C., March 2001-December 2003**

- Advised on African political and economic affairs
- Served as a liaison for the company in a sugar development/refinery project in the Caprivi region of Namibia and interacted with the Office of the Namibian President and National Assembly
- Retained by the Namibian government and AfricaGlobal to draft a sugar act

**Legislative Adviser to the Speaker of the Namibian National Assembly, the Director of the Namibian Election Commission, and the Vice Chancellor of the University of Namibia, January 2000-June 2002**

- Reviewed Namibian Election Code and drafted memorandum with recommended improvements
- Drafted national legislation merging the independent agricultural college into the University of Namibia system
- Drafted national legislation guaranteeing voting rights to agricultural workers

**Registered Election Expert with the United Nations, IFES, and the Electoral Institute of Southern Africa, 2002-present**  
**Consultant to various members of the Arkansas General Assembly, Little Rock, Arkansas, 1994-1999**

- Advised on constitutionality of proposed legislation
- Drafted legislation

**Consultant to the Arkansas Court of Appeals Redistricting Commission, Little Rock, Arkansas, 1996-1998**

- Drafted five redistricting bills and maps for the constitutionally required redistricting of the Court of Appeals

**Member of the Committee on Department of Corrections, Murphy Commission - Restructure of Arkansas Government, Little Rock, Arkansas, 1996-1997**

- Reviewed the existing structure of the state Department of Corrections
- Advised on how to streamline the department

**ADMINISTRATIVE & QUASI-JUDICIAL  
EXPERIENCE:**

**Commissioner, Little Rock Historic District Commission, Little Rock, Arkansas, 2005-2008**

- Enforce city regulations regarding alteration to structures in the Little Rock Historic District
- Sit as an administrative tribunal for approval of petitions under the Historic Design Guidelines

**Member, Board of Directors of the Arkansas Historic Museum, Little Rock, Arkansas, 2005-2006**

- Approve museum operations and budget
- Attend museum functions and fund raisers

**Director of International Development, Louisiana State University, 107 Hatcher Hall, Baton Rouge, Louisiana 70803**

Supervisor: Dr. Stephen Lucas, 225. 578.6801

Hours per week: 40+ Dates of employment: February 2000-August 2003

Job duties:

- Interacted with U.S. and state government agencies, NGOs, foreign governments and universities, and other LSU departments and officials
  - Worked with the Louisiana congressional delegation to get a \$12.5 million international project funded in fiscal years 2002 and 2003
  - Drafted a proposal for the president of the Louisiana Chemical Association and U.S. Senator John Breaux on building a regional system to neutralize transuranic waste from nuclear power plants
- Developed, drafted, wrote grants for, and administered international research, training, education, and consulting projects, especially those dealing with democratization issues
- Drafted and negotiated international contractual agreements for research and faculty and student exchange with universities and research centers



- Hired and supervised staff
- Drafted office budget, project budgets, and strategic plans
- Reorganized and expanded the role of the Office of International Development
- Advised the Office of International Programs and individual units on improving public relations; consulted on PR strategies

**Chairman, Committee for the Revision of the Arkansas Constitution, State Political Party of Arkansas, Little Rock, Arkansas, 1995-1996**

- Headed committee comprised of state legislators, attorneys, business people, and an appellate judge to review the proposed state Constitution and make recommendations

**Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas**

No supervisor                      Dates: 1990-1996

**Job duties:**

- Enforced election laws within the county
- Drafted administrative regulations for the commission
- Supervised the training of poll workers
- Evaluated various voting systems and purchased an optical scan system to be used countywide
- Prepared and defended annual budgets before the Washington County Quorum Court
- Sat as a member of an administrative tribunal
- Hired and supervised staff

**EDUCATION:**

- **Graduate Certificate, Election Governance, Griffith University, Queensland, Australia (2003)**
- **Master of Law, University of Arkansas School of Law, 204 Waterman Hall, Fayetteville, Arkansas 72701 (1993) Mini Thesis: "Water Rights in Indian Country"**
- **Juris Doctorate, Washburn University School of Law, 1700 College Ave., Topeka, Kansas 66621 (1984)**
- **Bachelor of Arts in History, Rutgers University, Administrative Services Bldg., 65 Davidson Road, Bush Campus, Piscataway, New Jersey 08854-8096 (1980)**

**REFERENCES:**

Judge Morris Arnold  
U.S. Court of Appeals  
for the Eighth Circuit  
P.O. Box 2060  
Little Rock, AR 72203-2060  
501.324.6880

Judge Lavenski Smith  
U.S. Court of Appeals  
for the Eighth Circuit  
425 West Capitol, Ste. 3110  
Little Rock, AR 72203  
501.324.7310

Brenda Turner  
Chief of Staff  
Office of the Governor  
State Capitol Building, Suite 250  
Little Rock, AR 72201  
501.682.3608

Judge Herb Ashby  
Former judge, Second Appellate District, Division 5  
2691 Baywater Place  
Thousand Oaks, CA 91362  
805.493.8205

Judge Jay Finch  
Nineteenth Judicial  
Circuit West, Division 3  
203 East Central  
Bentonville, AR 72712  
479.271.1020

Karen Lynn-Dyson/EAC/GOV

To Amie J. Sherrill/EAC/GOV@EAC

10/18/2005 04:38 PM

cc

bcc Adam Ambrogi/EAC/GOV

Subject Fw: Requested Documents

Aimee-

In case you couldn't open up the document which describes Job's elections background

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:36 PM —



"Job Serebrov"  
<serebrov@sbcglobal.net>  
08/19/2005 04:14 PM

To klynndyson@eac.gov  
cc

Subject Re: Requested Documents

Karen:

I enjoyed the discussion too. I really think that this project will be of national importance and can positively affect elections administration while providing an answer to the handling of the vote fraud problem for the future.

On another note, why don't you leave an evening free while I am there for dinner. I am trying to bring my wife along. If you can bring your husband it could make for an interesting evening.

Regards,

Job

Summary of Election Activities of Job Serebrov

Background to Election Problems in Arkansas

Ever since Reconstruction, Arkansas has had a history of election problems. The election fraud that gave rise to the Brooks-Baxter War in Arkansas in the 1870s involved people from both sides of the aisle voting more than once, the dead rising to cast a ballot or two, destroying ballots, creating ballots and making ballot boxes disappear. A strong one-party system

028827

perpetuated this tradition into modern times.

In 1995, I met with Arkansas Supreme Court Justice Tom Glaze to discuss voting issues and my efforts to clean up the electoral process. Although supportive, Justice Glaze encouraged me to proceed with caution. Before being elected to the Supreme Court, Justice Glaze had been employed in the 1960s by Gov. Win Rockefeller to clean up ballot fraud throughout Arkansas. He was nearly disbarred in the process by those involved in ballot fraud in a small, rural county.

Shortly after my discussion with Justice Glaze, I discovered how pervasive the election problems were in the state. For instance, ballot boxes were stuffed or disappeared into the night only to return altered. Contrary to state law, county sheriffs running in contested elections maintained custody of the ballot boxes. In one instance, 20 voted ballot boxes were found in the attic of a sheriff's deputy after he died.

Attorney (1991-2004)

In my private practice as an attorney, I represented numerous clients in county election contests throughout Arkansas. I also represented clients in matters before the Federal Election Commission. I have never lost an election case. Finally, I was hired as a consultant to a major nonprofit legal organization to review and summarize the 2002 amendments to federal election laws and apply the new law to 10 scenarios.

Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas (1990-1996)

This board consisted of three commissioners; I was the lone Republican. We were charged with supervising the training of poll workers, evaluating voting systems and then purchasing an optical scan system to be used countywide, preparing and justifying our annual budget before the Washington County Quorum Court, hiring and supervising staff and sitting as an administrative tribunal.

When I first came on the board, Washington County was primarily a one-party county and the Democrats were used to running elections according to tradition rather than the law. I had to battle with the two Democrats on the board to enforce election laws within the county. As I started to force the issue in the courts, the Republican Party gained strength. Four years later and after outlasting eight Democrat commissioners, I was able to work with new Democrat commissioners who recognized the need to enforce the law. At this point, the commission requested that I draft administrative regulations for the board. These remain in place today.

028828

Founder, President, General Counsel; Arkansans for Fair Elections (1994-1999)

In 1994, Gov. Mike Huckabee (R), then a candidate for lieutenant governor, asked me to serve as his general counsel for ballot fraud protection. Thinking it best to act independently of any candidate, I formed Arkansans for Fair Elections. I served as the organization's president and, later, general counsel. This group launched a statewide educational campaign to train poll watchers to recognize irregular or fraudulent electoral procedures; this included the creation of literature and a video. Our extensive public relations campaign brought media attention to the issue. We also organized a statewide team of citizen poll watchers and attorneys to ensure that the election laws were fairly enforced. We were so successful in the lieutenant governor's race that Arkansans for Fair Elections was asked to continue the effort until 1999 when I moved to Louisiana.

General Counsel - Ballot Fraud Protection Committee, Republican Party of Arkansas (1995-1999)

In late 1995, Asa Hutchinson, chairman of the Republican Party of Arkansas, appointed me as general counsel for the newly formed Ballot Fraud Protection Committee of the state party. I retained this position until 1999. I was responsible for coordinating statewide enforcement efforts and directing a legal team to respond to problematic situations prior to and on election day.

(Through my role with Arkansans for Fair Elections and the Ballot Fraud Protection Committee, I successfully sued or negotiated a settlement in more than two-thirds of the 75 counties in Arkansas over electoral irregularities.)

Legal Consultant to Republican Members of the Arkansas General Assembly (1994-1996)

Republicans in the General Assembly requested that I review and draft suggested changes to Arkansas election law. Based on my personal experience as an election commissioner and as an election attorney, I identified a number of areas of concern and drafted new statutes modeled on the best examples that I could find from other states. My proposal was not passed by the Democrat-controlled General Assembly as a package, however, several of its components were passed into law.

Consultant to the Arkansas Court of Appeals Redistricting Commission (1996-1999)

I drafted five redistricting bills and maps for the

028829

constitutionally required redistricting of the Arkansas Court of Appeals. These bills were based on current U.S. Supreme Court precedent regarding gerrymandering. I had to present each bill and give supporting testimony to the commission.

Director of International Development - Louisiana State University, Baton Rouge, Louisiana (2000-2003)

Part of my duties as director was to develop international cooperative projects. The theme of several of these proposals was democratization. In each case, I required review of the national election code of the country involved.

My activities in Namibia led to a request by the director of the Namibian Election Commission, Joram Rukambe and the Speaker of the Namibian National Assembly, Dr. Mose Tjitendero to review and suggest changes to the Namibian election code. This review took three months and resulted in proposed alterations a number of code sections. These suggestions were considered by the Namibian National Assembly and a number were incorporated into the code revisions. Additionally, I drafted legislation for the Speaker to guarantee voting rights to agricultural workers that were being denied by the owners of the farms. This legislation also was passed into law.

During this time, I was qualified as an election expert and placed on an election consultant list by the United Nations, IFES and the Electoral Institute of Southern Africa.

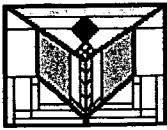
#### Related Memberships

- Republican Party of Arkansas (1990-1999)
  - Benton County, Arkansas, Republican Committee (1996-1999)
  - Washington County, Arkansas, Republican Committee (1990-1996)
- (When we moved to Louisiana in 1999, the party was in such turmoil that it was difficult to get involved. This past year, I have been prohibited by the Hatch Act from participating in partisan politics. This prohibition ends August 19 when my judicial clerkship ends.)

#### Related Education

- Graduate certificate in electoral governance, Griffith University, Queensland, Australia (2003)

028830



Adam Ambrogi/EAC/GOV  
10/18/2005 05:15 PM

To Raymundo Martinez/EAC/GOV@EAC  
cc  
bcc  
Subject Serebov credentials.

(The files are now in the right format. Let me know if you want Karen to send this.)

Hans:

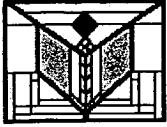
Attached are both Resume, and the Summary of Election Activities for Job Serebov, one of our contractors for the Voter Fraud/Voter Intimidation project. The work that Mr. Serebov has done on behalf of voter fraud and integrity projects in Arkansas are detailed in the Summary of Election Activities.



Serebov ResumeReg.doc Serebov Summary of Election Activities.doc  
RM

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

02883<sup>A</sup><sub>1</sub>



Adam Ambrogi/EAC/GOV

10/18/2005 06:02 PM

To hans.von.spakovsky@usdoj.gov

cc

bcc

Subject Serebov credentials.

Dear Hans:

As per Cmsr. Martinez's instructions, attached are both the Resume, and the Summary of Election Activities for Job Serebov, one of our contractors for the Voter Fraud/Voter Intimidation project. The work that Mr. Serebov has done on behalf of voter fraud and integrity projects in Arkansas are detailed in the Summary of Election Activities document.

Please call if you need additional information.

Very truly yours,  
Adam Ambrogi



Serebov ResumeReg.doc



Serebov Summary of Election Activities.doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028832



Karen Lynn-Dyson/EAC/GOV

11/14/2005 05:35 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Bert A.  
bcc

Subject Fw: October Progress Report

FYI-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/13/2005 05:32 PM —



"Tom O'Neill"

11/14/2005 05:27 PM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com, Vincelli@rutgers.edu, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "Johanna Dobrich" <jdobrich@eden.rutgers.edu>

Subject FW: October Progress Report

Tom O'Neill

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

**From:** Tom O'Neill [mailto:tom\_oneill@verizon.net]

**Sent:** Monday, November 14, 2005 5:26 PM

**To:** klynndyson@eac.gov

**Cc:** Vincelli@rutgers.edu; arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; ireed@rutgers.edu; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; rmandel@rci.rutgers.edu; 'Johanna Dobrich'; tokaji.1@osu.edu; foley.33@osu.edu; lauracw@columbus.rr.com

**Subject:** October Progress Report

Karen,

028830

Attached is the Progress Report for October. Please note that this report includes an attachment showing how our study classifies each state on key variables, such as counting out-of-precinct ballots, requirements for ballot evaluation, and other variables. It also displays how the data we used differs for some states for the vote counts reported by the Election Day Survey. We believe that our data is more accurate and complete (see for example the data for New Mexico and Pennsylvania).

I look forward to responding to any questions or concerns you or others at the EAC may have.

Tom O'Neill



OctoberFinal.doc

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# EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

## MONTHLY PROGRESS REPORT October 2005

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

November 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

02883E

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from October 1 through October 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In October we focused on finalizing our Provisional Voting analysis paper, including the development of recommendations to the EAC for a draft guidance document and best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. (See the attachment to this Progress Report for the details.) The importance of this demanding effort was described in September's Progress Report.

Also in October we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We will seek a meeting with the EAC in the next several weeks to confer about the schedule to complete the project and alternative approaches that could speed the conclusion of our work.

We will submit to the EAC a final draft of our report, a preliminary guidance document, and draft best practices before Thanksgiving. We project that EAC will take 3 to 4 weeks to review and react to that final draft. And we understand that after its review, the EAC will decide if it should move towards issuing a Guidance Document or recommending best practices. If the EAC does decide to issue a Guidance Document on Provisional Voting, the time needed for a review by the advisory boards is likely to delay a public hearing until early February.

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This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom\_oneill@verizon.net or by telephone at (908) 794-1030.

## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, Tasks 3.5 and 3.6 are nearing completion.

**Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of Provisional Voting and develop alternative means to achieve the goals of Provisional Voting.**

## LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with Provisional Voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on Provisional Voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and has completed this research.

**Progress:** We have completed the memorandum outlining Provisional Voting legislative changes since the 2004 election and we are continuing to clarify the laws prior to these changes.

**Challenges:** The variety in the form and frequency of Provisional Voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The final analysis will be sent to the EAC by Thanksgiving.

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## PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with Provisional Voting in 2004. The report findings from the survey of 400 local election officials are now complete. The survey results have proven to be instrumental in shaping our understanding of actual practice in administering Provisional Voting, including the steps local officials took to prepare for the election.

### PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with Provisional Voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to Provisional Voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** We completed a state-by-state narrative of developments in Provisional Voting and distributed it to the EAC and the PRG. This work has been helpful in understanding the context of the data collected on provisional voting from the states.

**Challenges:** The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent several revisions to incorporate up-to-date and reliable information. Now that so many other analyses, including the Election Day Survey, have been released, we were challenged by different interpretations of the same basic facts. But the reconciliation of interpretation and data collection has been invaluable in establishing rigor in our report.

**Work Plan:** We completed revisions of the narratives incorporating comments from the PRG and addressing any discrepancies between our findings and other interpretations of similar information included in other studies.

### PROVISIONAL VOTING STATISTICAL ANALYSIS

**Description:** During October the Eagleton research team continued to check its statistical analysis, and worked to reconcile the classifications of this analysis (such as states counting only those provisional ballots cast within the proper precinct versus states that counted ballots cast within the proper county) with the classification made in other parts of this study or in other studies (such as the Election Day Study or *Electionline* reports).

**Progress:** The effort to double check all of the classifications used in the study is complete. The results of this effort are displayed in the attachment to this progress report, "Characteristics of the Provisional Voting Process -- Classification of the States,"

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beginning on page 9. Only Delaware and Arkansas remain unclear in regard to one of the measures, and both states have been contacted to receive clarification in this area.

**Challenges:** The difficulties encountered have been a result of communication delays and time constraints. Some states have been more responsive to our inquiries about their practices than others. Overall, this is not an irresolvable problem but it does slow the process of completion down.

**Work Plan:** By early-November the final revision of the statistical analysis, which includes full reconciliation of all data within the study, will be complete. The reconciliation of data is displayed in the attachment to this progress report.

### **SURVEY OF COUNTY ELECTION OFFICIALS**

**Description:** The Eagleton Center for Public Interest Polling (CPIP) conducted a national survey of county election officials to measure several aspects of Provisional Voting.

**Progress:** The analysis of the survey results and findings report is complete. As a result of the critique by the PRG, the research team is revising and clarifying the descriptions of the survey design and sample selection process to make the research methods more transparent.

**Work Plan:** We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5. We will include necessary clarifications regarding survey design and sample selection in the final analysis and alternatives document.

<p><b>Task 3.6: Prepare preliminary draft guidance document.</b></p>
--

The report and recommendations now nearing completion constitutes the draft preliminary guidance document. Based on our conversation with the EAC, the draft gives the EAC the option of proceeding with a guidance document or issuing recommendations to the state for best practices, recommendations that would not constitute voluntary guidance. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we will await the EAC's decision on how to proceed.

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## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is becoming the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The 50 State (plus the District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** Analysis of voter identification data has begun and will increasingly become the central focus of our work.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

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## VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also used exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

**Challenges:** The analysis of these data had been postponed until the data reconciliation of Provisional Voting is complete. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID had been temporarily placed on hold. We are now beginning data analysis on the impact of voter identification requirements on voter turnout.

**Work Plan:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early December. Early January is our target to deliver the draft report and outline of alternative policies to the Peer Review Group. In mid January, the EAC would receive a draft report and recommendations that take into account the comments of the PRG.

## **PROJECT MANAGEMENT**

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** Eagleton has stayed in touch with members of the Peer Review Group since the September 21<sup>st</sup> conference call, and has solicited their final comments on the Provisional Voting research. During October, we telephoned two members who did not participate in the conference call to confirm their commitment to serving as members of the Peer Review Group. Profess Guy Charles affirmed his interest. Professor Pamela Karlan did not return the call. The revisions in the schedule for the project have now made it possible to begin the process of scheduling a meeting of the PRG to consider our draft report and recommendations on Voter Identification Issues. We anticipate that meeting will take place the second week of January.

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**Challenges:** No new challenges were encountered during October.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

### INTRANET

**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

### FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project October 1- October 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

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## ATTACHMENT TO OCTOBER PROGRESS REPORT

### **Characteristics of the Provisional Voting Process**

#### **Classification of the States**

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

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## New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting<sup>1</sup> and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

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<sup>1</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

<b>Table 1 CATEGORIZATION OF STATES -- Old vs New</b>		
<b>Old States</b>	<b>New States</b>	<b>HAVA Exempt or NA</b>
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
<b>26</b>	<b>18</b>	<b>7</b>

Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>2</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline’s criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases

<sup>2</sup> “Election Preview 2004: What’s changed, What Hasn’t and Why”. This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

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because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

<b>Table 2</b>			
<b>CATEGORIZATION OF STATES -- Statewide Registration Database</b>			
<b>Had Database 2004</b>	<b>No Database A-N</b>	<b>No Database N-W</b>	<b>HAVA Exempt or NA</b>
Alaska	Alabama	Ohio	Idaho
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Iowa	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
<b>16</b>	<b>27</b>		<b>8</b>

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

#### Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as “out-of-precinct.” States that invalidated such ballots were categorized as “In-precinct only.”

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<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

**Voter Identification**

We relied on Electionline studies, including the Voter Identification study<sup>3</sup> and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.<sup>4</sup> The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

<sup>3</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>

<sup>4</sup> In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

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**Table 4****CATEGORIZATION OF STATES -- Forms of Identification Required**

*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<b>Give Name</b>	<b>Sign Name</b>	<b>Match Signature</b>	<b>Provide ID</b>	<b>Photo ID</b>
<i>Maine</i>	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
<i>New Hampshire</i>	<i>Idaho</i>	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
<i>Wisconsin</i>	Michigan	West Virginia	Georgia	
<i>Wyoming</i>	Minnesota		Kentucky	
	<i>Mississippi</i>		Missouri	
	Nebraska		Montana	
	New Mexico		<i>North Dakota</i>	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
<b>9</b>	<b>14</b>	<b>8</b>	<b>15</b>	<b>5</b>

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

#### Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

028848



**Table 5****CATEGORIZATION OF STATES -- Ballot Evaluation Methods**

*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<b>Signature Match</b>	<b>Data Match</b>	<b>Affidavit</b>	<b>Return with ID</b>	<b>NA</b>
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

**Data Collection**

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

028849

<b>Table 6 Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>5</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>6</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>7</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>5</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>6</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>7</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

028850

## Data Differences with Election Day Study

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	N/A	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

028851

Karen Lynn-Dyson/EAC/GOV

11/15/2005 11:23 AM

To Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogil/EAC/GOV@EAC

cc

bcc

Subject Fw: Provisional Voting Report Status and Request for Advice

FYI-

Perhaps we can discuss in the next day or so.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123


----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/14/2005 11:22 AM -----

Karen Lynn-Dyson/EAC/GOV

11/15/2005 11:22 AM

To john.weingart@rutgers.edu

cc "Ruth Mandel" <rmandel@rci.rutgers.edu>, "Tom O'Neill"  
<Tom\_Oneill@verizon.net>

Subject Re: Provisional Voting Report Status and Request for Advice  


John-

Many thanks for getting this draft document to us.

Over the next day or so I will spend time with key EAC staff reviewing the document and considering your questions. As you may recall, Commissioner Martinez has taken a prominent role in the review of your initial work and I am certain he will continue to do so. Sadly, the Commissioner lost his mother two weeks ago and, consequently, will not return to the office until next week.

It is likely that EAC staff will not be able to give you a definitive answer on some of your questions until the Monday after Thanksgiving. I will, however, try to answer some of the administrative questions before that time.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>



"John Weingart"  
<john.weingart@rutgers.edu>

028852



11/15/2005 10:53 AM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel"  
<rmandel@rci.rutgers.edu>

cc

Subject Provisional Voting Report Status and Request for Advice

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18<sup>th</sup>. Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12<sup>th</sup> on the report we send you at the end of this week?
3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)
4. In any case, we will need a no-cost extension to the contract to carry us past December 31<sup>st</sup>. How do we make that request?
5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

028853

We look forward to discussing these matters with you.

Thanks, John

--

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290



KeyDatesRev1110.doc

028854

**DRAFT FOR DISCUSSION**

**REVISED SCHEDULE FOR EAC PROJECT**

**November 2005 – February 2006**

November 10, 2005

Assumes no guidance document, only analysis and recommended best practices

<b>DATE</b>	<b>Project Management</b>	<b>Provisional Voting</b>	<b>Voter ID</b>
<b>Week of 10/31</b>		Review draft report to EAC (Team)  Submit comments on report (Team)	Voter ID Research to TV
<b>Week of 11/7</b>	Status reports to JD for October tasks (all)	Redraft report (TON)  Review and approve report (Team)  Final draft report (TON)	Research continues (TV)
<b>Week of 11/14</b>	Submit monthly progress report (JD)	<b>Submit report to EAC for review</b> and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW)  EAC reviews report	Research continues (TV)
<b>Week of 11/21</b>		EAC review continues	Complete data collection for Voter ID analysis. (TV)
<b>Week of 11/28</b>		EAC review continues	Draft report on Voter ID analysis (TV)

028855

**DRAFT FOR DISCUSSION**

<b>Week of 12/5</b>	Status reports to JD for November tasks (all)	EAC review continues	Internal review (PT)
<b>Week of 12/12</b>	Submit monthly progress report (JD)	Receive EAC comments on report  Revise and PT review	Revise draft (TV)  Draft alternatives (TON)  Review and comment on alternatives (PT)
<b>Week of 12/19</b>		<b>Finalize analysis and best practices to EAC for publication<sup>1</sup></b>	Complete draft report and alternatives (TV, TON)
<b>Week of 12/26</b>			Review draft report and alternatives (PT)
<b>Week of 1/2/06</b>	Status reports to JD for December tasks (all)		Report and alternatives to PRG
<b>Week of 1/9/06</b>			PRG meets and comments  Revise (TV & TON)

<sup>1</sup> If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days.

028856



**DRAFT FOR DISCUSSION**

<p><b>Week of 1/16/06</b></p>	<p>Submit monthly progress report (JD)</p>		<p><b>Submit draft report, alternatives and compendium to EAC</b></p> <p>EAC reviews</p>
<p><b>Week of 1/23/06</b></p>			<p>EAC review continues</p>
<p><b>Week of 1/30/06</b></p>			<p>Comments from EAC</p> <p>Revise (TV &amp; TON)</p>
<p><b>Week of 2/6/06</b></p>	<p>Status reports to JD for January tasks (all)</p>		<p>Review and approve revised report and recommendations for best practices (PT)</p>
<p><b>Week of 2/13/06</b></p>	<p>Submit monthly progress report (JD)</p>		<p><b>Submit report and best practices to EAC</b></p>
<p><b>Week of 2/20/06</b></p>	<p>FINAL status reports to JD for all tasks (all)</p> <p>Final project and fiscal report to EAC</p> <p><b>PROJECT ENDS</b></p>		

028857

Margaret Sims /EAC/GOV  
11/16/2005 01:12 PM

To ghillman@eac.gov, pdegregorio@eac.gov,  
rmartinez@eac.gov, donetta.davidson@sos.state.co.us  
cc Sheila A. Banks/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
Eileen L. Collver/EAC/GOV@EAC, Gavin S.  
bcc  
Subject RESPONSE REQUESTED-Working Group for Voting Fraud  
and Voter Intimidation Project

Dear Commissioners:

The consultants' contracts for EAC's voting fraud and voter intimidation project require Tova Wang and Job Serebrov to work in consultation with EAC staff and the Commissioners "to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation". The contracts do not specify the number of working group members but, as EAC has to pay for the group's travel and we want the size of the group to be manageable, I recommend that we limit the number to 6 or 8. **Please let me know if you think that this limit is too conservative .**

Attached for your review and comment are two lists of potential working group members for this project. One list was submitted by Job, the other by Tova. Tova and Job have provided brief summaries of each candidate's relevant experience and have placed asterisks next to the names of the individuals whom they particularly recommend. I can provide more extensive biographies of these individuals, if you need them. If EAC agrees that the recommended working group members are acceptable, an equal number may be selected from each list in order to maintain a balanced perspective.

Absent from the attached lists is the name of a representative from the U.S. Department of Justice's Election Crimes Branch. At this time, I am working through the DOJ bureaucracy to determine to what degree Craig Donsanto will be permitted to participate. If he cannot be named as a working group member, we may still be able to use him as a resource.

**Please provide your feedback to me no later than Monday , November 28.** I am available to meet with you if you would like to discuss this matter further.

Peggy Sims  
Research Specialist



Possible Working Group Members -Serebrov.doc Possible Working Group Members- Wang.doc

028858

## Possible Working Group Members - Serebrov

I recommend the first four with an \*

\***Mark (Thor) Hearne II**-Counsel to Republican National Committee; National Counsel to American Center for Voting Rights; National election counsel to Bush-Cheney, '04; Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election; Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission).

\***Todd Rokita**-Secretary of State, Indiana; Secretary Rokita strives to reform Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible; Secretary Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues.

\***Patrick J. Rogers**-Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico; 1991-2003 General Counsel to the New Mexico Republican Party; Election cases: *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures; *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge; *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues; *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

\***David A. Norcross**- Partner, Blank Rome LLP, Trenton NJ, Washington D.C; Chairman, New Jersey Republican State Committee, 1977 – 1981; General Counsel, Republican National Committee, 1993 – 1997; General Counsel, International Republican Institute; Counsel, The Center for Democracy; Vice Chairman, Commission on Presidential Debates; Executive Director, New Jersey Election Law Enforcement Commission

**Benjamin L. Ginsberg**-Served as national counsel to the Bush-Cheney presidential campaign; He played a central role in the 2000 Florida recount; He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and

028859

Deliberative Process  
Privilege

National Republican Congressional Committee; His expertise is more in campaign finance.

**Cleta Mitchell**-Partner in the Washington, D.C. office of Foley & Lardner LLP; She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure; Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies; Her expertise is more in campaign finance law.

**Mark Braden**-Of counsel at Baker & Hostetler; He concentrates his work principally on election law and governmental affairs, including work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting; His expertise is mainly outside of the voter fraud area.

To: Peggy Sims  
From: Tova Wang  
Re: Working Group Recommendations  
Date: November 12, 2005

\*Wendy R. Weiser, Associate Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an expert in federal and constitutional law, has done a great deal of research, writing, speaking, and litigating on voting rights and election law issues. As part of the Brennan Center's wide ranging activities in the area of democracy, Ms. Weiser is currently overseeing an analysis and investigation of recent allegations of voter fraud throughout the country.

\*Barbara Arnwine is Executive Director of the Lawyers Committee for Civil Rights Under Law, an organization that for four decades has been at the forefront of the legal struggle to secure racial justice and equal access to the electoral process for all voters. Notably, Ms. Arnwine and the organization have led the Election Protection program for the last several years, a nationwide grassroots education and legal effort deploying thousands of volunteers and using a nationally recognized voter hotline to protect voters' rights on election day.

\*Daniel Tokaji, professor and associate director of the Election Law Center at the Moritz College of Law at the Ohio State University, is one of the nation's foremost experts in election law and reform and ensuring equality in the voting system. Professor Tokaji frequently writes and speaks on democracy related issues at academic and practitioner conferences, on such issues as voting technology, fraud, registration, and identification requirements, as well as the interplay between the election administration practices and voting rights laws.

Donna Brazile is Chair of the Democratic National Committee's Voting Rights Institute, the Democratic Party's major initiative to promote and protect the right to vote created in response to the irregularities of the 2000 election, and former Campaign Manager for Gore-Lieberman 2000 (the first African American to lead a major presidential campaign.) Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning, a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

Wade Henderson is the Executive Director of the Leadership Conference on Civil Rights (LCCR) and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), an organization at the forefront of defending voting rights for the last fifty years. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the National Association for the Advancement of Colored People (NAACP)

Robert Bauer is the Chair of the Political Law Practice at the law firm of Perkins Coie, National Counsel for Voter Protection, Democratic National Committee, Counsel to the Democratic Senatorial and Congressional Campaign Committees and Co-Author, Report

028861

**Deliberative Process  
Privilege**


of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105<sup>th</sup> Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country in the area of federal/state campaign finance and election laws.

Laughlin McDonald has been the executive director of the Southern Regional Office of the ACLU since 1972 and as the Director of the ACLU Voting Rights Project, McDonald has played a leading role eradicating discriminatory election practices and protecting the gains in political participation won by racial minorities since passage of the 1965 federal Voting Rights Act. During the past two decades, McDonald has broken new ground by expanding ACLU voting rights cases to include representation of Native Americans in various western states, and written innumerable publications on voting rights issues.

Joseph E. Sandler is a member of the firm of Sandler, Reiff & Young, P.C., in Washington, D.C., concentrating in campaign finance and election law matters, and general counsel to the Democratic National Committee. As an attorney he has handled campaign finance and election law matters for Democratic national and state party organizations, Members of Congress, candidates and campaigns. He served as general co-counsel of the Association of State Democratic Chairs, as general counsel for the Democratic Governors' Association and as counsel to several state Democratic parties.

Cathy Cox is serving her second term as Georgia's Secretary of State, having first been elected in 1998. In 2002 she earned re-election with over 61 percent of the vote, winning 146 out of 159 counties. Because of Secretary Cox's efforts Georgia has become a national leader in election reform. Her initiative made Georgia the first state in America to deploy a modern, uniform electronic voting system in every county

Karen Lynn-Dyson/EAC/GOV  
11/17/2005 09:53 AM

To john.weingart@rutgers.edu  
cc  
bcc Adam Ambrogi/EAC/GOV  
Subject Re: Provisional Voting Report Status and Request for Advice  


John-

We'll try and get you an answer on some of these by tomorrow.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>



"John Weingart"  
<john.weingart@rutgers.edu>  
11/15/2005 10:53 AM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel"  
<rmandel@rci.rutgers.edu>  
cc "Tom O'Neill" <Tom\_Oneill@verizon.net>  
Subject Provisional Voting Report Status and Request for Advice

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028863

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
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3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)
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We look forward to discussing these matters with you.

Thanks, John

--

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290



KeyDatesRev1110.doc

028864



Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC

12/07/2005 11:59 AM

cc

bcc

Subject Something to look forward to— or life after the VVSG

Hey-

I've had a chance to take a close look at the Eagleton Best Practices document.

I find it very confusing ( to say the least) and think it is a very long way from a Best Practices document we would want to or could use for our constituency.

Look forward to you all's thoughts and insights about next steps.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028865

Karen Lynn-Dyson/EAC/GOV

12/13/2005 01:41 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC

cc

bcc

Subject Fw: November's Progress Report

Eagleton's latest monthly report for your Commissioner's review.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 12/12/2005 01:39 PM —



"Johanna Dobrich"  
<jdobrich@eden.rutgers.edu>

12/13/2005 12:29 PM

To klyndyson@eac.gov

cc "tim.vercellotti@rutgers.edu" <tim.vercellotti@rutgers.edu>, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com, tom\_oneill@verizon.net

Subject November's Progress Report

Dear Ms. Karen Lynn-Dyson:

Attached please find the Eagleton/Moritz Progress Report for the month of November.

Please direct any questions about this report to Tom O'Neill (tom\_oneill@verizon.net).

Sincerely,

Johanna Dobrich

--

Johanna Dobrich  
jdobrich@eden.rutgers.edu



ProgressReport\_NOVEMBER 2005\_Eagleton Institute of Politics.doc

028866



---

**EAGLETON INSTITUTE OF POLITICS**

---

*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT**  
**November 2005**

**For**  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

December 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

028867

**Deliberative Process  
Privilege**

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from November 1 through November 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In November we completed and submitted our Provisional Voting analysis paper, including recommendations to the EAC for best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group on that research. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. The importance of this demanding effort was described in October's Progress Report. We continue to await the EAC's comments on that final draft.

Also in November we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We made a written request to the EAC for a no-cost extension of the contract through the end of February which we understand is likely to be approved before Christmas.

Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research. We have been advised that EAC will take several weeks to review and react to our final draft on provisional voting. As we await a January meeting on that topic, we are moving ahead

028868

quickly on the statistical analysis of voter identification data and summarizing the legal research that was completed earlier.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or by telephone at (908) 794-1030.

### **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November.

#### **Task 3.6: Prepare preliminary draft guidance document.**

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. That recommendation followed agreement by the EAC with that course of action. The submission of that report and recommendations, however, constitutes the document required under this task. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is the principal focus of our research at this time.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The 50 state (plus District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C. Moritz has completed its review of voter identification litigation. Moritz and Eagleton have worked together to review the research, clarify the categorization of that research on our charts, and reconcile the data developed in our two different research techniques categorizations.

**Challenges:** The biggest challenge facing the reconciliation process of research findings, descriptions and categorizations is that it is being done by two different teams (Moritz and Eagleton) who rely on different primary source materials. Despite the necessity this has created to reconcile conflicting data from time to time, the collaboration has also been very beneficial because it has made our research efforts more rigorous.

**Work Plan:** During December we will conclude our reconciliation and continue analysis of voter identification research, including an analysis of the most important issues and trends in voter identification litigation.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

028870

During the month of November, we developed narratives to establish how laws were passed, looking at when they were proposed and when they were eventually enacted. In the upcoming month, Eagleton will examine voter registration forms across the states to see what forms of identification are requested from mail-in registrants. The difficulty will be determining the 2004 status of the states.

### VOTER ID AND TURNOUT ANALYSIS

Now under way is a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. In November, we have analyzed both aggregate- and individual-level data to determine whether there is any relationship between voter turnout and the various forms of voter identification states require.

**Progress:** Analysis is under way for two data sets: County-level data that includes registration and turnout rates for 2000 and 2004, as well as Census measures and indicators of the type of voter identification requirements that were in existence at the time of the 2004 presidential election. The second data set consists of the voter supplement to the November 2004 Current Population Survey. This data set allows for testing of the same hypotheses at the individual level. Preliminary findings from the aggregate data set suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. This is a first cut at the data, however, and we will be adding a number of control variables to the analysis to see if the relationship holds.

**Challenges:** These analyses use hierarchical linear modeling. Because voter identification requirements vary by state, one must pay special attention to other, unseen state-level influences on the data. The models are difficult to run and interpret, so the analyses are time-consuming

**Work Plan:** The statistical analyses will continue during the month of December, and a draft of the findings is anticipated by the end of the month.

### **PROJECT MANAGEMENT**

#### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** During the month of November, Eagleton contacted the PRG Members on two occasions. First, all members received the final draft provisional voting report that was submitted to the EAC. Further comments are welcome but not expected from the PRG. Second, we have asked PRG members to reserve two dates in mid-January for potential conference call sessions to review the voter identification report.

**Challenges:** No new challenges were encountered during November.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

#### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

#### INTRANET

**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

### FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.


028872



A detail of expenses incurred from project November 1- November 30, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

028873

Karen Lynn-Dyson/EAC/GOV  
02/21/2006 02:22 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Eileen L. Collver/EAC/GOV@EAC, Nicole  
bcc  
Subject Re: Meeting with EAC in March 

Tom-

I will begin to poll the Commissioners to get a sense of when they might be available to do a "close out" meeting with Eagleton.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
02/21/2006 10:45 AM

To klynndyson@eac.gov  
cc  
Subject Meeting with EAC in March

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

028874

I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill

028875



"Daniel Tokaji"  
<tokaji.1@osu.edu>  
02/22/2006 02:22 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: PV and ID provisions

History: This message has been replied to and forwarded.

Hey Adam

Here's my Howard draft on preclearance. I'm also attaching something I just wrote for SCLR on the application of Section 2 of the VRA to election administration inequalities. Comments welcome.

Dan

Daniel P. Tokaji  
Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
614.292.6566  
<http://moritzlaw.osu.edu/blogs/tokaji/>

---

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Tuesday, February 21, 2006 3:42 PM  
**To:** tokaji.1@osu.edu  
**Subject:** Re: PV and ID provisions

Sounds like you're really swamped-- and I'm not going to put anything more on your plate-- when you get to it, that'll be fine.

While I have not heard in the press about the Cameron Quinn issue, it has become commonly known enough that you could discuss it without it getting back to me.

Hope all is well-- good luck with the law review articles.

---

Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"DANIEL TOKAJI" <tokaji.1@osu.edu>

02/21/2006 03:03 PM

To aambrogi@eac.gov  
cc  
Subject Re: PV and ID provisions

028878

Hi Adam: I've honestly not had a chance to look at this. I'm in the midst of trying to meet a couple of LR deadlines this week. But I do plan to turn to the ID draft by Monday of next week. I'm actually in CA right now and don't have the PV piece with me -- if you can email a copy, I'll try to give it another read-through by tomorrow. Dan

Daniel P. Tokaji  
Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
614.292.6566  
<http://moritzlaw.osu.edu/blogs/tokaji/>

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

From: aambrogi@eac.gov  
Date: Tuesday, February 21, 2006 2:35 pm  
Subject: PV and ID provisions

> Dan- did you have the comments on the provisional voting piece,  
> and if you  
> have it, a draft of the ID provisions? If not, no worries. This  
> is just  
> me asking for it, not "the EAC" or RM, but I'm trying to get out  
> ahead of  
> some issues.  
> Thanks much,  
> Adam

>

>

> -----

> Adam D. Ambrogi  
> Special Assistant to Commissioner Ray Martinez III  
> U.S. Election Assistance Commission  
> 1225 New York Ave. NW - Suite 1100  
> Washington, DC 20005  
> 202-566-3105

>

>



SCLRArt2.wpd HowLJArt3.wpd

028877

Karen Lynn-Dyson/EAC/GOV  
03/02/2006 02:04 PM

To Gracia Hillman/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M.  
bcc  
Subject Re: Eagleton close-out meeting

Commissioner-

Given travels costs and the number of persons involved from the Eagleton/Moritz team, the idea was to do the two meetings in the same day.

However, I could ask Nicole to determine if there is a day in March that might work with your schedule.

I am very reluctant to schedule a meeting later in April as the contract is technically over March 31 (a Friday). April 3 is the following Monday.

Please advise. Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Gracia Hillman/EAC/GOV



Gracia Hillman/EAC/GOV  
03/02/2006 01:57 PM

To klynn-dyson@eac.gov  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
Subject Re: Eagleton close-out meeting

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

028878

Karen Lynn-Dyson/EAC/GOV

03/16/2006 09:57 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
bcc

Subject Fw: Voter ID Paper --Final Draft

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>

03/15/2006 08:21 PM

To klynndyson@eac.gov

cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>,  
arapp@rci.rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, ireed@rutgers.edu,  
joharris@eden.rutgers.edu, john.weingart@rutgers.edu,  
rmandel@rci.rutgers.edu, "Johanna Dobrich"  
<jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu,  
foley.33@osu.edu, lauracw@columbus.rr.com

Subject Voter ID Paper --Final Draft

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to

028879

discuss them.

Tom O'Neill



ReportFinalDraft.doc

02888C



Karen Lynn-Dyson/EAC/GOV

02/28/2006 09:24 AM

To Adam Ambrogi/EAC/GOV@EAC, Elieen L.  
Collver/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC

cc Raymundo Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

bcc

Subject Final meeting with Eagleton

As you know Eagleton is finishing up their project and would like to give us a final report on it.

Are your Commissioners and Tom available to meet on any of the following days from 1:00-2:30:

March 23

March 29

March 30

Thanks

Karen Lynn-Dyson

Research Manager

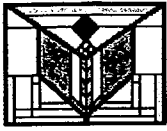
U.S. Election Assistance Commission

1225 New York Avenue , NW Suite 1100

Washington, DC 20005

tel:202-566-3123

028881



Adam Ambrogi/EAC/GOV  
04/25/2006 03:40 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Agenda



AGENDA (Standards Board) 2006.doc  
this should've been sent by amie early today.

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028882



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## MEMORANDUM

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**TO:** MEMBERS OF EAC STANDARDS BOARD  
**FROM:** PEGGY NIGHSWONGER, CHAIR, EXECUTIVE BOARD  
RAY MARTINEZ, EAC COMMISSIONER  
**DATE:** APRIL 28, 2006  
**SUBJECT:** UPCOMING MEETING OF STANDARDS BOARD, MAY 23-24, 2006

**The next meeting of the EAC Standards Board (to be held jointly with the EAC Board of Advisors) will be held in Washington, D.C. on Tuesday, May 23 and Wednesday, May 24, 2006 at the Hamilton Crown Plaza hotel.** We hope you will be able to attend this important meeting, which will focus on consideration and discussion of a number of ongoing election administration research projects currently underway by the EAC. Additionally, there will also be an update and discussion regarding recent work conducted by the National Institute of Standards and Technology (NIST) on the voluntary voting system guidelines. (Please see the draft agenda attached for additional information.)

As was the case with our previous meetings of the EAC Standards Board, the EAC will pay the cost of travel, hotel and a Federal per diem for any member of the Standards Board wishing to attend the May 2006 meeting. Upon receipt of this memorandum, please contact the EAC's travel agent, Adventure Travel, at (877) 472-6718 to make your travel arrangements. Additionally, if you have any questions or need assistance in making your travel plans, please call \_\_\_\_\_ (email address is \_\_\_\_\_).

Thank you in advance for your willingness to join us in Washington, D.C. We look forward to seeing you soon.

Q28883

**U.S. ELECTION ASSISTANCE COMMISSION  
Standards Board Meeting Agenda  
Washington, D.C.  
May 23 – 24, 2006**

**Tuesday, May 23, 2006**

***NOON – 1:15 P.M.* LUNCHEON**

**Brief Welcoming Remarks**  
Commissioner Ray Martinez III

**EAC Staff Presentations:**

*Design for Democracy* (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson);

*Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins);

*Public Access Portals* (Edgard Cortes);

*Katrina Voting Assistance Relief* (Edgardo Cortes).

***1:15 – 1:30 P.M.* BREAK**

***1:30 – 2:30 P.M.* STANDARDS BOARD PLENARY SESSION**  
Session Chaired by Peggy Nighswonger  
Chair, Executive Board

- Appointment of Parliamentarian
- Adoption of Agenda
- Review of Meeting Book Materials
- Presentation of Proposed Permanent Bylaws  
Kevin Kennedy, Executive Director, State Elections Board, Wisconsin  
Joanne Armbruster, Atlantic County Superintendent of Elections, New Jersey
- Election of Executive Board Vacancy

028884

**2:30 – 4:00 P.M.**

**DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING**

Presentors:

Thomas O'Neil: Project Manager, EAC Provisional Vote Study  
Edward Foley: Director, Election Law@Moritz (The Ohio State University)

EAC Resource Person: Julie Thompson-Hodgkins

**4:00 – 4:15 P.M.**

**BREAK**

**4:15 – 5:30 P.M.**

**DISCUSSION: DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)**

Presentors:

Jennifer Collins-Foley, EAC Consultant  
Dora Rose, Center for Election Integrity, Cleveland State University

EAC Resource Person: Karen Lynn-Dyson

**NOTE: Attendees on their own for dinner.**

**Wednesday, May 24, 2006**

**8:00 – 8:30 A.M.**

**CONTINENTAL BREAKFAST**

**8:30 – 9:15 A.M.**

**BRIEFING: PROPOSED MANAGEMENT GUIDELINES**

Presentors:

Connie Schmidt, EAC Consultant  
Brit Williams, EAC Consultant

EAC Resource Person: Brian Hancock

**9:15 – 10:00 A.M.**

**BRIEFING: DRAFT REPORT ON VOTE COUNT/RECOUNT**

Presentors:

Dr. Thad Hall, Assistant Professor of Political Science, University of Utah

Doug Chapin, EAC Consultant

EAC Resource Person: Julie Thompson-Hodgkins, EAC

**10:00 – 10:15 A.M.**

**BREAK**

**10:30 – 11:00 A.M.**

**DISCUSSION: DRAFT REPORT ON IMPROVING DATA COLLECTION**

Presentors:

028885

Karen Lynn-Dyson, Research Director, EAC  
Laiza Otero, Research Associate, EAC

**11:00 – 11:55 P.M. BRIEFING: DRAFT REPORT ON VOTER FRAUD/VOTER INTIMIDATION**

Presentors:  
Job Serebrov, Associate, The Nixon Law Firm  
Tova Wang, Democracy Fellow, The Century Foundation  
EAC Resource Person: Juliet Thompson, EAC General Counsel

**NOON – 1:30 P.M. JOINT LUNCHEON**

***EAC Activities Update***

Brief Remarks by: Chairman Paul DeGregorio  
Commissioner Gracia Hillman

***Presentation: General Update on NIST/TGDC Activities***

Introduction of Speakers: Commissioner Donetta Davidson

Presentors:  
John Wack, NIST

**1:40 – 2:45 P.M. DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION**

Presentors:  
Thomas O'Neil: Project Manager, EAC Voter I.D. Study  
Edward Foley, Director, Election Law@Moritz, The Ohio State University  
EAC Resource Person: Juliet Thompson-Hodkins

**2:45 – 3:00 P.M. BREAK**

**3:00 – 5:00 P.M. STANDARDS BOARD PLENARY SESSION**  
Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

**5:00 P.M. ADJOURN**

028880

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

04/25/2006 10:28 PM


To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi

cc

bcc

Subject Re: BoA and Standards Board agendas 

History:

 This message has been replied to.

I have taken a look at the agendas. My questions start with assignment as resource person. Is Peggy going to be present for the Vote Fraud and Intimidation presentation? I have not been the person refereeing between Job and Tova, nor am I up to date on what their findings and work are. If I am just there to support the meeting, that's great, but Peggy should be there to make any substantive comments. I suffer from a similar problem with regard to the Eagleton presentation (other than what I gathered from their presentation a few weeks ago).

Perhaps what I need to know is what is the "resource person" supposed to do?

As a second question, do we know whether this lunch on Tuesday is "set". The hotel contract will have to be amended to include this lunch. I don't want to move forward on setting that up if it is not approved by the two Boards or it is otherwise not going to occur.

Third issue is that last time the Standards Board wanted a parliamentarian -- not volunteering, but that should be considered in terms of how our staff is assigned.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Amie J. Sherrill/EAC/GOV

Amie J. Sherrill/EAC/GOV

04/25/2006 03:45 PM

To jthompson@eac.gov@EAC, Karen Lynn-Dyson/EAC/GOV

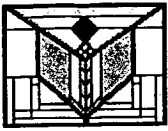
cc

Subject BoA agenda



May 2006 Board of Advisors Agenda.doc  
Amie J. Sherrill  
Special Assistant to Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

028887



Adam Ambrogi/EAC/GOV  
04/26/2006 08:05 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
bcc  
Subject Re: BoA and Standards Board agendas

Julie, in response to your questions:

The first response is that we've placed you as a resource person for only the ID, Provisional ballot, and then your presentation on legal clearinghouse website. So that's changed. The EAC reference person is not supposed to really interact, but be able to respond to the Board if they have questions regarding EAC processes in conducting the research. The panelists should start and lead the discussion. (i.e. for the breakout sessions on VVSG, I only answered procedural questions from the crowd). The ID and PV issues are inherently legal, so we wanted you to be on hand to explain those items.

As to the second issue, I'm copying Ray, because I believe that the lunch has the Executive Board's approval to alter the contract to provide for a lunch. They had requested an earlier start that day, and this is an effort to accommodate that request. If he disagrees, then I can do what is necessary to get approval for that lunch officially.

Third issue, we may need a parliamentarian for the SB, however, that role might be filled by Bill Campbell as the new role of secretary, or as one of the other SB members appointed. Do you believe we need a line in the first plenary session to appoint the parliamentarian? Maybe Gavin's interested? Ray, any thoughts?

Thanks,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

Juliet E. Thompson-Hodgkins/EAC/GOV

Juliet E.  
Thompson-Hodgkins/EAC/GO  
V  
04/25/2006 10:28 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi  
cc  
Subject Re: BoA and Standards Board agendas

I have taken a look at the agendas. My questions start with assignment as resource person. Is Peggy going to be present for the Vote Fraud and Intimidation presentation? I have not been the person refereeing between Job and Tova, nor am I up to date on what their findings and work are. If I am just there to support the meeting, that's great, but Peggy should be there to make any substantive comments. I suffer from a similar problem with regard to the Eagleton presentation (other than what I gathered from

028888



their presentation a few weeks ago).

Perhaps what I need to know is what is the "resource person" supposed to do?

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Third issue is that last time the Standards Board wanted a parliamentarian -- not volunteering, but that should be considered in terms of how our staff is assigned.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Amie J. Sherrill/EAC/GOV

Amie J. Sherrill/EAC/GOV

04/25/2006 03:45 PM

To jthompson@eac.gov@EAC, Karen Lynn-Dyson/EAC/GOV

cc

Subject BoA agenda



May 2006 Board of Advisors Agenda.doc  
Amie J. Sherrill  
Special Assistant to Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

028889

Margaret Sims/EAC/GOV  
05/04/2006 02:07 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ddavidson@eac.gov, ghillman@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.  
Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,  
Adam Ambrogi/EAC/GOV@EAC, Elieen L.  
bcc

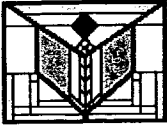
Subject Voting Fraud-Voter Intimidation Working Group Meeting

Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims  
Election Research Specialist

028890



Adam Ambrogi/EAC/GOV  
05/08/2006 11:44 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo  
Cortes/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC,  
Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret  
cc Amie J. Sherrill/EAC/GOV@EAC

bcc

Subject Research materials for Boards

Team:

To help guide our thoughts for those of us working on the 1 PM meeting on what materials will be available for the SB/BOA meeting, I have drawn up a "comment" version of the SB agenda, which indicates, for each agenda item present, what materials will be available, and when. This is a preliminary agenda, and I realize we'll discuss these issues at the meeting today, but I thought it would be better to see this in written form, so we can identify potential problem areas. I'd like to work from this, modify this document, as we make our determinations as when, and in what form we will be providing materials to the Boards.

Again-- you all are the experts as to what stage these projects are at-- so I apologize if there's missing or incomplete information here.

Thanks,  
Adam



ResearchAGENDA (Standards Board) 2006.doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028891



U.S. ELECTION ASSISTANCE COMMISSION  
Standards Board Meeting Agenda  
Washington, D.C.  
May 23 – 24, 2006

**Tuesday, May 23, 2006**

**NOON – 1:15 P.M. LUNCHEON**

**Brief Welcoming Remarks**  
Commissioner Ray Martinez III

**EAC Staff Presentations:**

*Design for Democracy* (improvements to ballot design, national voter registration/mail-in form and polling place signage) (Karen Lynn-Dyson)

*Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins)

*Public Access Portals* (Edgardo Cortes)

*Katrina Voting Assistance Relief* (Edgardo Cortes)

**Comment [Aa1]:** KLD has initial materials—need to determine what materials should/could be provided to the SB.

**Comment [Aa2]:** EC and JL may have initial website to present/display for SB members at meeting—unlikely to have materials ready in advance.

**Comment [Aa3]:** Update only, no materials.

**Comment [Aa4]:** Update only, no materials.

**1:15 – 1:30 P.M. BREAK**

**1:30 – 2:30 P.M. STANDARDS BOARD PLENARY SESSION**  
Session Chaired by Peggy Nighswonger  
Chair, Executive Board

- Appointment of Parliamentarian
- Adoption of Agenda
- Review of Meeting Book Materials
- Presentation of Proposed Permanent Bylaws
- Election of Executive Board Vacancy

**2:30 – 4:00 P.M. DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING**

**Presenters:**  
Thomas O'Neill: Provisional Voting/Voter Identification Study

**Comment [Aa5]:** Draft available same as last copy to 4Cs. Do not expect additional versions produced prior to the SB meeting. Can be emailed in advance.

Edward Foley: Director, Election Law@Moritz (The Ohio State University)

EAC Resource Person: Julie Thompson-Hodgkins

**4:00 – 4:15 P.M. BREAK**

**4:15 – 5:30 P.M. DISCUSSION: DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)**

Presenters:  
Jennifer Collins-Foley, Pollworker Institute  
Abby Horn, Cleveland State University  
EAC Resource Person: Karen Lynn-Dyson

**Comment [Aa6]:** Preliminary draft available for both College Pgm. and Poll. Pgm. Needs additional work prior to releasing. Work might be able to be performed in the next week.

**NOTE: Attendees on their own for dinner.**

**Wednesday, May 24, 2006**

**8:00 – 8:30 A.M. CONTINENTAL BREAKFAST**

**8:30 – 9:15 A.M. BRIEFING: PROPOSED MANAGEMENT GUIDELINES**

Presenters:  
Connie Schmidt, EAC Consultant  
Brit Williams, EAC Consultant  
EAC Resource Person: Brian Hancock

**Comment [Aa7]:** CS, BW and BH to meet on Wednesday to determine what of their materials may be ready for distribution. Current potentials: 3 pg. overview briefing of guideline principals, and 20 pg. chapter on security principals.

**9:15 – 10:00 A.M. BRIEFING: DRAFT REPORT ON VOTE COUNT/RECOUNT**

Presenters:  
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah  
Doug Chapin, EAC Consultant  
EAC Resource Person: Peggy Sims

**Comment [Aa8]:** Draft report completed, according to KLD, too technical at this point, but able to be released.

**10:00 – 10:15 A.M. BREAK**

**10:30 – 11:00 A.M. DISCUSSION: DRAFT EAC ELECTION DAY SURVEY**

Presenters:  
Karen Lynn-Dyson, Research Director, EAC  
Laiza Otero, Research Associate, EAC

**Comment [Aa9]:** LO and JT are currently in consultation regarding the form of the document. Will likely be ready in draft form for distribution immediately prior to SB meeting.

**11:00 – 11:55 P.M. BRIEFING: DRAFT REPORT ON VOTING FRAUD/VOTER INTIMIDATION**

Presenters:  
Job Serebrov, Associate, The Nixon Law Firm  
Tova Wang, Democracy Fellow, The Century Foundation

**Comment [Aa10]:** There is legal research prepared, but not compiled in a format that would be usable by SB members. Because of the close proximity to the working group meeting, final report is not yet written.

EAC Resource Person: Peggy Sims

**NOON – 1:30 P.M. JOINT LUNCHEON**

***EAC Activities Update***

Brief Remarks by: Chairman Paul DeGregorio  
Vice-Chairman Ray Martinez III  
Commissioner Gracia Hillman

**Presentation:** ~~General Update on NIST/TGDC Activities~~

**Comment [Aa11]:** Allan Eustice contacted to determine what materials may be made available.

Introduction of Speaker: Commissioner Donetta Davidson

Presenters:  
John Wack, NIST

**1:40 – 2:45 P.M.**

**~~DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION~~**

**Comment [Aa12]:** Draft available same as last copy to 4Cs. Do not expect additional versions produced prior to the SB meeting. Can be emailed in advance.

Presenters:  
Thomas O'Neill, Provisional Voting/Voter Identification Study  
Edward Foley, Director, Election Law@Moritz, The Ohio State University  
EAC Resource Person: Julie Thompson-Hodgkins

**2:45 – 3:00 P.M.**

**BREAK**

**3:00 – 5:00 P.M.**

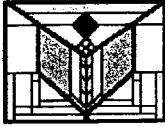
**STANDARDS BOARD PLENARY SESSION**

Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

**5:00 P.M.**

**ADJOURN**



Adam Ambrogi/EAC/GOV

05/09/2006 12:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret cc Amie J. Sherrill/EAC/GOV@EAC

bcc

Subject Materials for Standards Board (DRAFT)

Attached, please find draft letter to be sent to the Commissioners. Any comments or corrections, please make them and send them back to Amie and myself. We hope to send this email by 3 PM today, so please take a look quickly-- for your projects.

Commissioners:

Peggy, Edgardo, Karen, Laiza, Adam and Amie met this afternoon to discuss what materials will be ready to present to the Standards Board and Board of Advisors members during the meetings later this month. Listed below is what we have determined to be available for their review and feedback. Please review this list and offer your feedback.

Also, attached is an updated SB agenda with "comments" on work product for each project to be discussed.

Design for Democracy - exhibits to be on display for board member review and feedback; Ric Grefe will be present with KLD to discuss the processes used to get to these specific examples; Preliminary Design Report (dated April 10, 2006) to be delivered electronically to the members for their review prior to the meeting

Legal Information Clearinghouse - demo version of the website will be available to show

Public Access Portals - there is a conference scheduled for June 16-18; a tentative agenda and, if desired, a list of participants will be made available to the members for their review and feedback; also future steps can also be outlined for their feedback

Katrina Voting Assistance Relief - due to the limited amount of information that we can offer, we propose eliminating this topic and substituting discussions on our Language Working Group meetings

Language Working Groups - the members will be updated on our two working group meetings and the information received at both, as well as our next steps

Provisional Voting - a draft of the final report is to be delivered to the 4 C's by 5/11 for their review and feedback; product following 4C review will be available 5/17 for electronic distribution to board members

Poll Worker R T & R (including College Pollworker) - reports as they stand now are not ready to be presented, according the KLD; Peggy and Karen to communicate to project managers the need for a report by 5/11 for review by the 4 C's

Proposed Management Guidelines - Connie, Brit, and Brian to determine on 5/10 what materials are ready for presentation to board members; currently a 3 page overview briefing of guideline principles and a 20 page chapter on security principles have been prepared

Vote Count/Recount - materials to be delivered to board members include the public testimony given by Thad Hall and Doug Chapin at our Seattle public meeting and several case studies outlining examples

EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to be presented (Ready).

028895

Voting Fraud/Voter Intimidation - a summary of the preliminary research and a recap of the discussions of the May 18 working group meeting offering brainstorming ideas, not advice

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.



Research Work Product AGENDA 2006.doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028896



Margaret Sims /EAC/GOV

05/09/2006 02:48 PM

To Adam Ambrogi/EAC/GOV@EAC

cc

bcc

Subject Fw: Working Group-Perez

Adam:

J.R. Perez's resume is attached, and I have forwarded my last explanatory email to Job in answer to his concerns. I will tell Tova not to contact Ray, but that she may talk with you about this issue. Thanks! ---  
Peggy



Perez bio 5\_5\_06.doc

----- Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 02:45 PM -----

Margaret Sims /EAC/GOV

05/09/2006 11:13 AM

To "Job Serebrov"

<serebrov@sbcglobal.net>@GSAEXTERNAL

cc wang@tcf.org

Subject Re: Working Group-Perez 

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from

028897

San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy



tx elec admin-appt-partisan restrictions.doc

"Job Serebrov" <serebrov@sbcglobal.net>



"Job Serebrov"  
<serebrov@sbcglobal.net>  
05/08/2006 11:30 PM

To psims@eac.gov  
cc  
Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

028898

Margaret Sims /EAC/GOV

05/09/2006 02:51 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc Adam Ambrogi/EAC/GOV@EAC

bcc

Subject RE: Working Group-Perez

We are still on for 4 PM. Ray is out of the office due to a family emergency, so I suggest you NOT contact him. You may contact his Special Assistant, Adam Ambrogi (aambrogi@eac.gov or 202-566-3105), who also hails from Texas. --- Peggy

"Tova Wang" <wang@tcf.org>



"Tova Wang"

<wang@tcf.org>

05/09/2006 12:08 PM

To psims@eac.gov, serebrov@sbcglobal.net

cc

Subject RE: Working Group-Perez

We are still doing the 4 pm call, right? We can discuss it more then. Would it be OK if I see if Ray knows this person? Thanks. Tova

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

**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Tuesday, May 09, 2006 10:14 AM

**To:** serebrov@sbcglobal.net

**Cc:** wang@tcf.org

**Subject:** Re: Working Group-Perez

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

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028899

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--- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

05/08/2006 11:30 PM

To psims@eac.gov  
cc  
Subject Re: Working Group

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As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

028900

Margaret Sims /EAC/GOV

05/09/2006 03:38 PM

To Adam Ambrogi/EAC/GOV@EAC

cc Amie J. Sherrill/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Karen

bcc

Subject Re: Materials for Standards Board (DRAFT) 

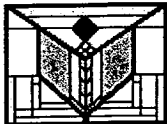
Adam:

Regarding the **Vote Count/Recount** contract, I am trying to schedule a teleconference with Thad for tomorrow. We will discuss preparations for his presentation, among other things. He may suggest additional materials, other than the testimony, that may be acceptable to us.

Regarding the **Vote Fraud/Voter Intimidation** project, I don't think the materials will include a written recap of the Working Group meeting, scheduled for May 18, if we have to have the materials to you NLT COB May 17. I can provide a verbal recap at the meeting. I may be able to pull together a written recap after May 18, but it won't be available much earlier than the week of the meetings.

Let me know if you have any questions. --- Peggy

Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV

05/09/2006 12:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC

cc Amie J. Sherrill/EAC/GOV@EAC

Subject Materials for Standards Board (DRAFT)

Attached, please find draft letter to be sent to the Commissioners. Any comments or corrections, please make them and send them back to Amie and myself. We hope to send this email by 3 PM today, so please take a look quickly-- for your projects.

Commissioners:

Peggy, Edgardo, Karen, Laiza, Adam and Amie met this afternoon to discuss what materials will be ready to present to the Standards Board and Board of Advisors members during the meetings later this month. Listed below is what we have determined to be available for their review and feedback. Please review this list and offer your feedback.

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028901

Legal Information Clearinghouse - demo version of the website will be available to show

Public Access Portals - there is a conference scheduled for June 16-18; a tentative agenda and, if desired, a list of participants will be made available to the members for their review and feedback; also future steps can also be outlined for their feedback

Katrina Voting Assistance Relief - due to the limited amount of information that we can offer, we propose eliminating this topic and substituting discussions on our Language Working Group meetings

Language Working Groups - the members will be updated on our two working group meetings and the information received at both, as well as our next steps

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Proposed Management Guidelines - Connie, Brit, and Brian to determine on 5/10 what materials are ready for presentation to board members; currently a 3 page overview briefing of guideline principles and a 20 page chapter on security principles have been prepared

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EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to be presented (Ready).

Voting Fraud/Voter Intimidation - a summary of the preliminary research and a recap of the discussions of the May 18 working group meeting offering brainstorming ideas, not advice

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.




Research Work Product AGENDA 2006.doc


-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028902

Karen Lynn-Dyson/EAC/GOV  
05/09/2006 04:03 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
bcc

Subject Re: Materials for Standards Board (DRAFT) 

History:  This message has been forwarded.

Adam-

This is fine and accurate as far as I can tell.

I assume Julie is comfortable with the fact that she is the EAC resource staff person for the Eagleton presentations.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028906



Adam Ambrogi/EAC/GOV  
05/09/2006 05:54 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Karen  
bcc

Subject Board Meeting Materials

Commissioners:

Peggy, Edgardo, Karen, Laiza, Adam and Amie met yesterday afternoon to discuss what materials will be ready to present to the Standards Board and Board of Advisors members during the meetings later this month. Listed below is what the Research Team has determined to be available for their review and feedback. It looks like the much of the information needed will be able to be sent to Adventure travel for their preparation in binders on May 17th.

Please review this list and offer your feedback.

Also, attached is an updated SB agenda with "comments" on work product for each project to be discussed.

Design for Democracy - exhibits to be on display for board member review and feedback; Ric Grefe will be present with KLD to discuss the processes used to get to these specific examples; Preliminary Design Report (dated April 10, 2006) to be delivered electronically to the members for their review prior to the meeting

Legal Information Clearinghouse - Information about contract, potentially a demo website to show members functionality (tentative).

Public Access Portals - there is a conference in June; a tentative agenda will be made available to the members for their review and feedback; also future steps can also be outlined for their feedback; we will include a timeline for when draft documents will be submitted so we can send them out via email for feedback before finalizing the project.

Katrina Voting Assistance Relief - due to the limited amount of information that we can offer, EC strongly proposes eliminating this topic and substituting discussions on our Language Working Group meetings

Language Working Groups - the members will be updated on our two working group meetings and the information received at both, as well as our next steps for development of programs

Provisional Voting - a draft of the final report is to be delivered to the 4 C's by 5/11 for their review and feedback; product following 4C review will be available 5/17 for electronic distribution to board members

Poll Worker R T & R (including College Pollworker) - reports as they stand now are not ready to be presented, according to the KLD; Peggy and Karen to communicate to project managers the need for a report by 5/11 for review by the 4 C's

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Vote Count/Recount - materials to be delivered to board members include the public testimony given by Thad Hall and Doug Chapin at our Seattle public meeting and several case studies outlining examples. Peggy will discuss on 5/10 with Prof. Hall regarding other materials that may be presented.

EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to

028904



be presented (Ready).

Voting Fraud/Voter Intimidation - a summary of the preliminary research and initial feedback from the May 18 working group meeting offering brainstorming ideas, not formal advice.

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.



Research Work Product AGENDA 2006.doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028905

Karen Lynn-Dyson/EAC/GOV  
05/10/2006 04:44 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL,  
Adam Ambrogi/EAC/GOV@EAC  
cc foley.33@osu.edu, john.weingart@rutgers.edu, "Tim  
Vercellotti" <tim.vercellotti@rutgers.edu>, tokaji.1@osu.edu  
bcc

Subject RE: Travel arrangements for the EAC Board of Advisors and  
Standards Board meeting

History:

✉ This message has been replied to.

Tom-

It is my understanding that Adam Ambrogi has been in touch with Ned Foley and, in turn, Dan Tokaji to indicate that you and Dan will present the information on the Voter ID project, while you and Ned will present the information on the Provisional Voting project.

Adam Ambrogi can also clarify your presentations. As I understand it, you will present your Voter ID and Provisional Voting projects to the Standards Board. You will then present your Voter ID and Provisional Voting Projects to the Board of Advisors.

I believe Adventure Travel handles hotel and travel arrangements.

I do not believe accommodations have been made for other members of the project team to attend. I will ask Adam Ambrogi, who is the principal point of contact on these meetings, to clarify this.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/10/2006 10:12 AM

To klynndyson@eac.gov  
cc john.weingart@rutgers.edu, tokaji.1@osu.edu,  
foley.33@osu.edu, "Tim Vercellotti"  
<tim.vercellotti@rutgers.edu>  
Subject RE: Travel arrangement for the EAC Board of Advisors and  
Standards Board meeting

Karen,

As we discussed last week, the Eagleton-Moritz team making the presentations at the advisory board meetings will include others in addition to Ned and me. While Ned and I will handle the briefing on the provisional voting report, the team for the briefing on the Voter ID report will include Dan Tokaji and Tim Vercellotti.

028906

Just to understand what Adventure Travel is to provide: will its services include hotel reservations and travel, or does it have a more limited mission?

Thanks,

Tom O'Neill

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Tuesday, May 09, 2006 4:34 PM

**To:** klynndyson@eac.gov

**Cc:** john.weingart@rutgers.edu; Tom O'Neill

**Subject:** Re:Travel arrangement for the EAC Board of Advisors and Standards Board meeting

Tom O' Neill and Ned Foley-

As you know you are scheduled to make two presentations to the EAC Board of Advisors and Standards Board on **Tuesday May 23, 2006 from 2:30-4:00 PM (on Provisional Voting ) and on Wednesday ,May 24th from 1:40-2:45 PM ( on Voter Identification )**

If you have not already done so, please make your hotel and travel arrangements through Adventure Travel, Judy Mays 205-444-4833 ( judy.mays@adtrav.com)

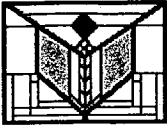
These reservations should be made no later than tomorrow COB.

Please indicate to Judy Mays that you are a contractor, who is scheduled to make a presentation at the meeting.


Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028907



Adam Ambrogi/EAC/GOV  
05/16/2006 11:47 AM

To Margaret Sims/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, ecortes@eac.gov, Karen  
Lynn-Dyson/EAC/GOV@EAC, twilkey@eac.gov  
bcc  
Subject Re: Standards and Advisory Board Agendas 

These are the only publicly released agendas yet-- The discussion, and modification that was done last week as to what products are being produced are not reflected-- but will in the final version. These were distributed because of numerous Staff questions as to time and place issues.


We'll forward around the final draft info when available.

Peggy- any word yet on what's up for Voting Fraud issue for the meeting(I know you have that WG in two days, but....)?  
Thanks,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

Margaret Sims/EAC/GOV

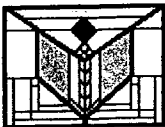
Margaret Sims/EAC/GOV  
05/16/2006 11:43 AM

To Adam Ambrogi/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, twilkey@eac.gov, Karen  
Lynn-Dyson/EAC/GOV@EAC, ecortes@eac.gov  
Subject Re: Standards and Advisory Board Agendas 

These agendas still indicate that draft reports on the Vote Count/Recount and the Voting Fraud-Voter Intimidation research projects will be presented for consideration. In neither case is this true. Reports from these projects are unavailable or not ready for prime time.

Thad Hall and Doug Chaping will have a PowerPoint presentation on the Vote Count/Recount project (and we can make copies of their testimony in Seattle available) and I will have a status report on the Voting Fraud-Voter Intimidation project for the boards. --- Peggy

Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV  
05/16/2006 11:15 AM

To EAC Staff  
cc  
Subject Standards and Advisory Board Agendas

028908

Dear Staff

While the final version will be sent later this week, attached is the current agendas for the Standards and Advisory Boards, so the staff will know when (or if) they have to be present.

Thanks,  
Adam Ambrogi



May 2006 Board of Advisors Agenda.doc AGENDA (Standards Board) 2006(WEB).doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

028909

**U.S. ELECTION ASSISTANCE COMMISSION  
Board of Advisors Meeting Agenda  
Washington, D.C.  
May 23 – 24, 2006**

**Tuesday, May 23, 2006**

**Noon – 1:15 P.M. LUNCHEON**

**Brief Welcoming Remarks**

EAC Chairman Paul DeGregorio

Board of Advisors Chair Beverly Kaufman

**EAC Staff Presentations:**

*Katrina Voting Assistance Relief* (Edgardo Cortes);

*Public Access Portals* (Edgardo Cortes);

*Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins);

*Design for Democracy* (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson)

***NOTE: The EAC Standards Board will be meeting simultaneously.***

**1:15 – 1:30 P.M. BREAK**

**1:30 – 2:30 P.M. BOARD OF ADVISORS PLENARY SESSION**

Session Chaired by Beverly Kaufman, Chair

- Appointment of Parliamentarian
- Call of Roll and Appointment of Proxy Committee
- Appointment of Resolutions Committee
- Review of Meeting Book Materials
- Report of Proxy Committee to establish voting strength
- Adoption of Agenda
- Adoption of Minutes of August 2005 Meeting

028910

**2:30 – 4:00 P.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)**

Presenters:  
Jennifer Collins-Foley, Pollworker Institute  
Abby Horn, Cleveland State University  
Resource Person: Karen Lynn-Dyson, EAC

**4:00 – 4:15 P.M. BREAK**

**4:15 – 5:30 P.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON VOTE COUNT/RECOUNT**

Presenters:  
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah  
Doug Chapin, EAC Consultant  
Resource Person: Julie Thompson-Hodgkins, EAC

*NOTE: Attendees on their own for dinner.*

**Wednesday, May 24, 2006**

**8:00 – 8:30 A.M. CONTINENTAL BREAKFAST**

**8:30 – 9:15 A.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON PROVISIONAL VOTING**

Presenters:  
Thomas O'Neill: Project Manager, Provisional Voting / Voter Identification Research Project  
Edward Foley: Director, Election Law@Moritz (The Ohio State University)  
Resource Person: Julie Thompson-Hodgkins, EAC

**9:15 – 10:00 A.M. BRIEFING ON PROPOSED MANAGEMENT GUIDELINES**

Presenters:  
Connie Schmidt, EAC Consultant  
Brit Williams, EAC Consultant  
Resource Person: Brian Hancock, EAC

**10:00 – 10:15 A.M. BREAK**

**10:30 – 11:00 A.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON VOTING FRAUD/VOTER INTIMIDATION**

Presenters:  
Job Serebrov, Associate, The Nixon Law Firm

023911

Tova Wang, Democracy Fellow, The Century Foundation  
Resource Person: Juliet Thompson-Hodgkins, EAC

**11:00 – 11:55 A.M. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON VOTER IDENTIFICATION**

Presenters:  
Thomas O'Neill: Project Manager, Provisional Voting / Voter  
Identification Research Project  
Edward Foley, Director, Election Law@Moritz, The Ohio State  
University  
Resource Person: Juliet Thompson-Hodgkins, EAC

**NOON – 1:30 P.M. JOINT LUNCHEON**

**EAC Activities Update**

Brief Remarks by: Chairman Paul DeGregorio  
Vice Chairman Ray Martinez, III  
Commissioner Gracia Hillman

**Presentation: General Update on NIST/TGDC Activities**

Introduction of Speakers: Commissioner Donetta Davidson

Presentors:  
John Wack, NIST

**1:40 – 2:45 P.M. PRESENTATION AND CONSIDERATION OF DRAFT EAC  
ELECTION DAY SURVEY**

Presenters:  
Karen Lynn-Dyson, Research Director, EAC  
Laiza Otero, Research Associate, EAC  
Resource Person: Brian Hancock, EAC

**2:45 – 3:00 P.M. BREAK**

**3:00 – 5:00 P.M. BOARD OF ADVISORS PLENARY SESSION**  
Session Chaired by Beverly Kaufman, Chair

- Election of Officers
- Report of Resolutions Committee  
Chaired by Vice Chairman Chris Thomas
- Other Business

**5:00 P.M.**

**ADJOURN**

028912





**U.S. ELECTION ASSISTANCE COMMISSION  
Standards Board Meeting Agenda  
Washington, D.C.  
May 23 – 24, 2006**

**Tuesday, May 23, 2006**

***NOON – 1:15 P.M.* LUNCHEON**

**Brief Welcoming Remarks**  
Commissioner Ray Martinez III

**EAC Staff Presentations:**

*Design for Democracy* (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson);  
*Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins);  
*Public Access Portals* (Edgardo Cortes);  
*Katrina Voting Assistance Relief* (Edgardo Cortes).

***1:15 – 1:30 P.M.* BREAK**

***1:30 – 2:30 P.M.* STANDARDS BOARD PLENARY SESSION**  
Session Chaired by Peggy Nighswonger  
Chair, Executive Board

- Appointment of Parliamentarian
- Adoption of Agenda
- Review of Meeting Book Materials
- Presentation of Proposed Permanent Bylaws
- Election of Executive Board Vacancy

***2:30 – 4:00 P.M.* DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING**

Presenters:  
Thomas O'Neill: Provisional Voting/Voter Identification Study 028916

Edward Foley: Director, Election Law@Moritz (The Ohio State University)

EAC Resource Person: Julie Thompson-Hodgkins

**4:00 – 4:15 P.M. BREAK**

**4:15 – 5:30 P.M. DISCUSSION: DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)**

Presenters:  
Jennifer Collins-Foley, Pollworker Institute  
Abby Horn, Cleveland State University  
EAC Resource Person: Karen Lynn-Dyson

**NOTE: Attendees on their own for dinner.**

**Wednesday, May 24, 2006**

**8:00 – 8:30 A.M. CONTINENTAL BREAKFAST**

**8:30 – 9:15 A.M. BRIEFING: PROPOSED MANAGEMENT GUIDELINES**

Presenters:  
Connie Schmidt, EAC Consultant  
Brit Williams, EAC Consultant  
EAC Resource Person: Brian Hancock

**9:15 – 10:00 A.M. BRIEFING: DRAFT REPORT ON VOTE COUNT/RECOUNT**

Presenters:  
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah  
Doug Chapin, EAC Consultant  
EAC Resource Person: Peggy Sims

**10:00 – 10:15 A.M. BREAK**

**10:30 – 11:00 A.M. DISCUSSION: DRAFT EAC ELECTION DAY SURVEY**

Presenters:  
Karen Lynn-Dyson, Research Director, EAC  
Laiza Otero, Research Associate, EAC

**11:00 – 11:55 P.M. BRIEFING: DRAFT REPORT ON VOTING FRAUD/VOTER INTIMIDATION**

Presenters:  
Job Serebrov, Associate, The Nixon Law Firm  
Tova Wang, Democracy Fellow, The Century Foundation

028914

EAC Resource Person: Peggy Sims

***NOON – 1:30 P.M.***    **JOINT LUNCHEON**

***EAC Activities Update***

Brief Remarks by:    Chairman Paul DeGregorio  
                                 Vice-Chairman Ray Martinez III  
                                 Commissioner Gracia Hillman

***Presentation: General Update on NIST/TGDC Activities***

Introduction of Speaker: Commissioner Donetta Davidson

Presenters:  
John Wack, NIST

***1:40 – 2:45 P.M.***    **DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION**

Presenters:  
Thomas O’Neill, Provisional Voting/Voter Identification Study  
Edward Foley, Director, Election Law@Moritz, The Ohio State University  
EAC Resource Person: Julie Thompson-Hodgkins

***2:45 – 3:00 P.M.***    **BREAK**

***3:00 – 5:00 P.M.***    **STANDARDS BOARD PLENARY SESSION**  
Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

***5:00 P.M.***    **ADJOURN**

Margaret Sims /EAC/GOV  
05/17/2006 01:01 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC

cc

bcc

Subject Handouts for Board Meetings

Adam and Amie:

Attached are the status report on the Voting Fraud-Voter Intimidation research project and two versions of the PowerPoint presentation from our Vote Count/Recount contractor (one with the first slide labeled for the EAC Standards Board; the other with the first slide labeled for the Board of Advisors). --- Peggy



.EAC Boards VF-VI Status Report.doc Best Practices STANDARDS.ppt Best Practices Advisors.ppt

028916

**Deliberative Process  
Privilege**



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

028917

## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

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although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people – including representatives from the Department of Justice (DOJ) - indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While DOJ's Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance, the Election Crimes Branch, Public Integrity Section, has increased prosecutions of individual instances of felon, alien, and double voting at the same time as it maintains an aggressive pursuit of systematic schemes to corrupt the electoral process.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.

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- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

### Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

028928

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

028924

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

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As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

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instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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# Best Practices in Vote Counts, Recounts, and Challenges



Presentation to  
EAC Standards Board  
May 24, 2006



# Research Team

---

- Thad Hall, University of Utah
- R. Michael Alvarez, Caltech
- Kim Brace, Election Data Services
- Doug Chapin, *electionline.org*



# Requirement for Study

---

- Section 241 of the HAVA requires the EAC to conduct a study examining vote counting and recounting.
- Identify methodology for studying best practices
- Examine election laws and regulations in all 50 states and the District



# Study Overview

---

- Identified best practice methodologies
- Developed criteria for evaluating practices
- Presented the most common practices for vote counting and recounting.
- Identified “benchmark” practices that exceed the most common practices in states.
- Identified best practices for vote counts and recounts that have been implemented.



# Criteria for Studying Vote Counting and Recounting

---

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# GAO Best Practice Methodology

---

- Document existing process
- Research literature; talk to practitioners and experts
- Select comparative entities for review
- Collect data from selected entities
- Identify barriers to change
- Compare/contrast processes; develop implementation recommendations



# Best Practice Study

---

- Researched existing literature on vote counting
- Developed baseline of existing activity
- Developed benchmarks for practices that exceed baseline
- Identified potential best practices for review by the EAC Commissioners
- States and localities have to do the hard work: Implementation



# International Principles for Vote Counting

---

IFES, (IDEA), and the United Nations  
election project states:

to establish and maintain public confidence in  
the electoral process, vote counting systems  
and procedures should incorporate the  
[eight] fundamental principles of vote  
counting in a democratic election.





# Eight Principles for Vote Counting

---

- Transparency
- Security
- Professionalism
- Accuracy
- Secrecy
- Timeliness
- Accountability
- Equality



# Common International Practice

---

- All ballots should be reconciled against the number of voters who cast ballots.
- Ballots are initially counted at the precinct where the vote was cast.
- There are explicit legal requirements for securing ballots.
- Recounts are allowed by request; five countries conduct 100 percent audits.
- Convenience voting is everywhere.



# Evaluating State Practices in Statute and Regulation

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# Developing National Baseline

---

- Survey of state laws and regulations
  - Security
  - Pre-election procedures
  - Election ballot procedures
  - End of Election Procedures
  - Definition of "What Constitutes A Vote"
  - Counting and Accounting
  - Recounting
  - Challenges



# Developing National Baseline

---

- Survey of state laws and regulations
  - Identified Specific Questions
  - Reviewed Survey with EAC, Election Officials, and Outside Experts
- Collected Data
  - Statutory or Regulatory Language
  - Legal Citation



# Key Findings

---

- Three issues with great variation in coherence and completeness
  - Ballot Accounting
  - Ballot Security
  - What Constitutes a Vote



# Survey Next Steps

---

- Each report is being carefully reviewed and edited
- Submit surveys to states for review
- States will have interactive online survey form to note problems



# Benchmarking Election Law

---

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# Benchmarking

---

- Common in public and private sectors
- How does your performance stack up to similar organizations? OR
- How does your performance stack up to a pre-selected target?
  
- GOAL: Think about your practices.



# Benchmarking Practices

---

- Using the survey data, we have identified most common practices
- For many activities, we will propose “benchmark” practices
  - Clearer,
  - More detailed, or
  - More comprehensive

# Benchmarking Example: Ballot Accounting

---

- Most Common Practice: No Standard
- Benchmark: The counting board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the poll book. If [they] cannot reconcile... [they] shall submit... a written report stating how many ballots were missing or in excess and any reason ...for the discrepancy.



# Benchmarking Limitations

---

- Not all activities can be benchmarked
- Some activities reflect political and cultural decisions by the state. For example:
  - Absentee voting
  - Handling of recounts and challenges



# Best Practices in Election Law

---

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# What are Best Practices

---

- Best practices refer to the processes, practices, and systems identified in... organizations that performed exceptionally well and are widely recognized as improving an organization's performance and efficiency in specific areas.



# Effective Best Practices

---

- Address a complete process
- Have been carefully charted
- Often come from organizations with similar characteristics



# Best Practices Examined

---

- What Constitutes a Vote
- Accounting
- Auditing
- Security
- Transparency
  
- Issues in Challenges and Recounts



# Best Practices in Vote Counts, Recounts, and Challenges



Presentation to  
EAC Board of Advisors  
May 23, 2006



# Research Team

---

- Thad Hall, University of Utah
- R. Michael Alvarez, Caltech
- Kim Brace, Election Data Services
- Doug Chapin, *electionline.org*



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# Evaluating State Practices in Statute and Regulation

028962



# Developing National Baseline

---

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# Benchmarking Election Law

---

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# Benchmarking

---

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# Best Practices in Election Law

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---

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- Have been carefully charted
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# Best Practices Examined

---

- What Constitutes a Vote
  - Accounting
  - Auditing
  - Security
  - Transparency
- 
- Issues in Challenges and Recounts

Karen Lynn-Dyson/EAC/GOV  
05/17/2006 05:17 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc Adam Ambrogio/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC  
bcc  
Subject RE: Presentations at the EAC Governing Boards 

I am told that a Wordperfect copy of the Provisional document will be fine.

EAC staff will convert it to a PDF file. Please sent the final drafts of the reports ASAP.

Also, you are correct to note the changes in the time allotments Please divide the time among your staff as you deem appropriate.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/17/2006 04:57 PM

To klynndyson@eac.gov  
cc tokaji.1@osu.edu, john.weingart@rutgers.edu,  
foley.33@osu.edu  
Subject RE: Presentations at the EAC Governing Boards

Karen, I don't have the capacity to produce a PDF copy of the report. (I thought we discussed this last week and you agreed that the word document would suffice.) Someone at Eagleton could surely covert the DOC file to PDF, but since I just read your email now (4:50), we could not provide a PDF copy today. Please let me know if you want me to pursue this tomorrow.

Thanks for the schedule below. But it raises a question. Earlier this week you told me that the Commissioners asked that we limit our presentation to 10 minutes and leave the rest of the time for questions and comments. As I noted in my response, condensing our reports to 10 minutes poses a challenge. Is the 10 minute limit no longer operative?

Tom O'Neill

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]  
**Sent:** Wednesday, May 17, 2006 12:30 PM  
**To:** tom\_oneill@verizon.net  
**Cc:** asherrill@eac.gov; aambrogio@eac.gov; jthompsonhodgkins@eac.gov  
**Subject:** Re:Presentations at the EAC Governing Boards

028976



Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

**EAC Standards Board ( 137 members)**

**Tuesday, May 23, 2006**

**2:30-4:00 PM**

**Hamilton Ballroom**

Provisional Voting

45 minutes for presentation

45 minutes for questions and answers

**Wednesday, May 24, 2006**

**1:40-2:45 PM**

**Hamilton Ballroom**

Voter Identification

40 minutes for presentation

25 minutes for questions and answers

**EAC Board of Advisors ( 36 members)**

**Wednesday, May 24, 2006**

**8:30-9:15 AM**

**Lafayette Park Ballroom**

Provisional Voting

20 minutes for presentation

25 minutes questions and answers

**Wednesday, May 24, 2006**

**11:00-11:55 PM**

**Lafayette Ballroom**

Voter Identification

30 minutes presentation

25 minutes questions and answers

**EAC General Counsel Julie Thompson - Hodgkins will facilitate /moderate all of your sessions**

Will be in touch tomorrow after the Commissioners have met.

0288

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

028978

Karen Lynn-Dyson/EAC/GOV

05/17/2006 05:32 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC

cc

bcc

Subject Fw: PV Final Draft for Review by Advisory and Standards Boards

Here is the report to be included

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 05/17/2006 05:31 PM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>

05/12/2006 04:51 PM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu,  
lauracw@columbus.rr.com, "Tim Vercellotti"  
<tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu,  
davander@eden.rutgers.edu, dlinky@rci.rutgers.edu,  
ireed@rutgers.edu, joharris@eden.rutgers.edu,  
john.weingart@rutgers.edu, rmandel@rci.rutgers.edu,  
"Johanna Dobrich" <jdobrich@eden.rutgers.edu>

Subject PV Final Draft for Review by Advisory and Standards Boards

Karen,

Attached is the Final Draft of our report on Provisional Voting for review by the Advisory Board and the Standards Board. I understand from our conversation earlier today that it will be reviewed by the Commissioners at their meeting next week, and, if approved by them, distributed to the boards in advance of their meetings on May 23 and 24. This report will form the basis of our PowerPoint briefing for the boards at those meetings. I will not have hard copies of those PowerPoint presentations for distribution to the boards until the day of the meeting.

We intend to have the Final Draft Voter ID Report to you in time for review by the Commissioners at their second meeting next week.

Thanks for your guidance.

Tom O'Neill



PVFINALDRAFT0512.doc

028978

**Report to the  
U. S. Election Assistance Commission  
On  
Best Practices to Improve Provisional Voting  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252**

May 12, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

**FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

**Report to the  
U. S. Election Assistance Commission**

**Best Practices to Improve Provisional Voting**

**CONTENTS**

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<b>Recommendations</b>	<b>9</b>
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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors  
**The Research Team**

This research report on Provisional Voting in the 2004 election is part of a broader analysis that also includes a study of Voter Identification Requirements, a report on which is forthcoming. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

## **Project Management Team**

Dr. Ruth B. Mandel  
Director, Eagleton Institute of Politics  
Board of Governors Professor of Politics  
Principal Investigator  
Chair of the Project Management Team

Edward B. Foley  
Robert M. Duncan/Jones Day Designated  
Professor of Law  
The Moritz College of Law  
Director of Election Law @ Moritz

Ingrid Reed  
Director of the New Jersey Project  
The Eagleton Institute of Politics

Daniel P. Tokaj  
Assistant Professor of Law  
The Moritz College of Law

John Weingart  
Associate Director  
The Eagleton Institute of Politics

Thomas M. O'Neill  
Consultant, The Eagleton Institute of Politics  
Project Director

Dave Andersen  
Graduate Assistant

John Harris  
Graduate Assistant  
The Eagleton Institute of Politics

Donald Linky  
Senior Policy Fellow  
The Eagleton Institute of Politics

April Rapp  
Project Coordinator  
Center for Public Interest Polling  
The Eagleton Institute of Politics

Sara A. Sampson  
Reference Librarian,  
Moritz College of Law

Tim Vercellotti  
Assistant Research Professor  
Assistant Director, Center for Public Interest  
Polling  
The Eagleton Institute

Laura Williams  
The Moritz College of Law

## **FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

### **Peer Review Group**

R. Michael Alvarez  
Professor of Political Science  
California Institute of Technology

Timothy G. O'Rourke  
Dean, Fulton School of Liberal Arts  
Salisbury University

John C. Harrison  
Massee Professor of Law  
University of Virginia School of Law

Bradley Smith  
Professor of Law  
Capital University Law School

Martha E. Kropf  
Assistant Professor Political Science  
University of Missouri-Kansas City

Tim Storey  
Program Principal  
National Conference of State Legislatures

Daniel H. Lowenstein  
Professor of Law, School of Law  
University of California at Los Angeles

Peter G. Verniero  
former Attorney General, State of New Jersey  
Counsel, Sills, Cummis, Epstein and Gross, PC

The Peer Review Group improved the quality of our work by critiquing drafts of our analysis, conclusions and recommendations. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in the policy recommendations of the report.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## EXECUTIVE SUMMARY

### Background and Methodology

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005.

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.<sup>1</sup> The process HAVA outlined left considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction (precinct or larger unit) the ballot must be cast in order to be counted.<sup>2</sup>

The general requirement for provisional voting is that, if a registered voter appears at a polling place to vote in an election for Federal office, but either the potential voter's name does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, that potential voter must be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the EAC's Election Day Survey, "first-time voters who registered by mail without identification and cannot provide identification, as required under HAVA. . ." <sup>3</sup> HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. Election administrators are required by HAVA to notify individuals of their opportunity to cast a provisional ballot.

---

<sup>1</sup>The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See [www.electioncenter.org](http://www.electioncenter.org).

<sup>2</sup> The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6<sup>th</sup> Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

<sup>3</sup> The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.html>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004.)

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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Our research began in late May 2005. It focused on six key questions raised by the EAC.

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.<sup>4</sup>
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

## KEY FINDINGS

### Variation among the states

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63%, were counted. Provisional ballots accounted for a little more than 1% of the final vote tally. These totals obscure the wide variation in provisional voting among the states.<sup>5</sup>

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<sup>4</sup> Attachment 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures. It also describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

<sup>5</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

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- Six states accounted for two-thirds of all the provisional ballots cast.<sup>6</sup>
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.
- States with voter registration databases counted, on average, 20% of the provisional ballots cast.
- States without databases counted ballots at more than twice that rate: 44%.<sup>7</sup>
- States that provided more time to evaluate provisional ballots counted a greater proportion of those ballots. Those that provided less than one week counted an average of 35.4% of their ballots, while states that permitted more than 2 weeks, counted 60.8%.

An important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>8</sup>

## Variation within states

Within states, too, there was little consistency among different jurisdictions. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot.

Resources available to administer provisional voting varied considerably among and within states. Differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.

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<sup>6</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>7</sup> As the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without." Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

<sup>8</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.28986.

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For Review by the Standards Board and Board of Advisors

- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be managed poorly. Provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

## **The lessons of litigation**

Successful legal challenges highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. Most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots. This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second –and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## **States move to improve their processes**

Shortly after the 2004 election, several states came to the conclusion that the administration of their provisional voting procedures needed to be improved, and they amended their statutes. The new legislation highlights areas of particular concern to states about their provisional voting process.

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.
- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices that draw on the experience gained in the 2004 election can be useful in states’ efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

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## SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

### Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

### Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendation section of this report could be helpful. Among those questions are:

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

### Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

### Assess each stage of the provisional voting process

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Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for best practices to avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Best practice would be for states should provide guidelines (as do Connecticut and Delaware) to estimate the supply of provisional ballots needed at each polling place.

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.
- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

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- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

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For Review by the Standards Board and Board of Advisors

## Provisional Voting in 2004

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.

These totals obscure the wide variation in provisional voting among the states.<sup>9</sup> Six states accounted for two-thirds of all the provisional ballots cast.<sup>10</sup> State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted provisional ballots at more than twice that rate, 44%.

An important source of variation was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>11</sup>

- The percentage of the total vote cast as provisional ballots averaged more than 2% in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.<sup>12</sup>
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states had their ballots counted more frequently than those in the new states. This experience effect is evidence that there is room for improvement in provisional balloting procedures, especially in those states new to the process.<sup>13</sup> That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

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<sup>9</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

<sup>10</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>11</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

<sup>12</sup> To compensate for the wide differences in vote turnout among the 50 states the average figures here are calculated as the mean of the percent cast or counted rather than from the raw numbers of ballots cast or counted.

<sup>13</sup> Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time limit to process provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from “new” states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC can facilitate the exchange of experience among the states and can offer all states information on more effective administration of provisional voting.

Concluding optimistically that experience will make all the difference, however, may be unwarranted. Only if the performance of the “new” states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Our current understanding of how provisional voting worked in 2004 is not sufficient to determine unambiguously which view is correct.

1. “New” states may have a political culture different from “old” states. That is, underlying features of the “new” states political system may be the reason they had not adopted some form of provisional voting before HAVA. The “new” states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. The training they offer poll workers about provisional ballots may not be as frequent or effective as in other states. If the inconsistent performance in the “new” states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.<sup>14</sup>
2. “Old” states may devote fewer resources to updating their registration files or databases because they consider provisional ballots as a reasonable fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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<sup>14</sup> Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, “no state gave the voter the right to find out the status of their ballot after the election.” Now all offer that opportunity. See Bali and Silver, “The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000,” manuscript, Department of Political Science, Michigan State University. Resisting HAVA’s mandates through foot-dragging lacks any legitimate foundation in law or policy.



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For Review by the Standards Board and Board of Advisors

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit.<sup>15</sup>
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>16</sup> In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.<sup>17</sup>

<sup>15</sup> See Table 2 in Appendix 2 for information on the verification method used in each state.

<sup>16</sup> The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

<sup>17</sup> The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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For Review by the Standards Board and Board of Advisors

- In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
- If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.<sup>18</sup>
- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.<sup>19</sup>
  - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks<sup>20</sup>.
  - Those states that permitted less than one week counted an average of 35.4% of their ballots.
  - States that permitted between one and two weeks counted 47.1%.
  - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast<sup>21</sup>.
  - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

## Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors beyond statewide factors, such as verification requirements or the time provided for ballot evaluation, also influence the provisional voting process. Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that “states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state.”<sup>22</sup>

Election Line reported that:

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<sup>18</sup> This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

<sup>19</sup> See Appendix \_\_, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

<sup>20</sup> Many thanks to Ben Shepler, of the Moritz College of Law, for assembling complete data on the time requirements states permitted for the counting of provisional ballots.

<sup>21</sup> 43 states are included in this analysis, including Washington D.C. The 7 election-day registration states are omitted, as is Mississippi, which never provided data on provisional ballots. North Carolina is also omitted from the regressions, as it does not have a statewide policy on how it verifies provisional ballots.

<sup>22</sup> Recommendation 2.3.2 of the Report of the Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” September 2005, p.16. The report also observed that, “. . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated.”

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- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important in such districts. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

### **Effectiveness of Provisional Voting**

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. Information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were

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made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

***Estimates of Votes Lost In 2000 Presidential Election***

<b><i>Votes Lost (Millions)</i></b>	<b><i>Cause</i></b>
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

***Table 1 Cal Tech – MIT Voting Technology Project Estimates***

4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. In 2004, about 1.2 million provisional voters were counted. A rough estimate, then, of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)<sup>23</sup>. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

## **Legislative Response**

Indeed, several states<sup>24</sup> came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

<sup>23</sup> Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems. After each election the CPS asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

<sup>24</sup> Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

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Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.<sup>25</sup>

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

## Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second –and significantly– the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to

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<sup>25</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots “very challenging and unrealistic. To overcome this challenge, the *entire department’s employees were mobilized to process provisional ballots.*” The report also found that in Los Angeles County, “staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots.” In a close, contested election, “duplicate” ballots would doubtless receive long and careful scrutiny.” See Appendix 7, GAO, “Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,” September 2005. (GAO Report-05-997)

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determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

## RECOMMENDATIONS

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use of provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have voted provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

### Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

### Self-evaluation of Provisional Voting –4 Key Questions

The first need to achieve greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

## Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

### The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result— well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."<sup>26</sup>

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.<sup>27</sup> Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.<sup>28</sup>

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<sup>26</sup> The Century Foundation, *Balancing Access and Integrity*, Report of the Working Group on State Implementation of Election Reforms, July 2005.

<sup>27</sup> See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004).

<sup>28</sup> See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the

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- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.<sup>29</sup> Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers may need appropriate training to understand their duty to give such voters a provisional ballot.<sup>30</sup>

## A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency." <sup>31</sup>
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.<sup>32</sup>
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

## B. At the Polling Place

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wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

<sup>29</sup> *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6<sup>th</sup> Cir. 2004)

<sup>30</sup> *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

<sup>31</sup> Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

<sup>32</sup> The Century Foundation, op. cit.

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Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>33</sup> Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>34</sup> A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>35</sup> At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>36</sup> States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

<sup>33</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>34</sup> 2005 N.M. Laws 270 page no. 4-5.

<sup>35</sup> Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

<sup>36</sup> Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

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## C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."<sup>37</sup> Nonetheless, the *Panio v. Sutherland*<sup>38</sup> decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.<sup>39</sup>
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.<sup>40</sup> While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the

<sup>37</sup> The Century Foundation, op. cit.

<sup>38</sup> 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

<sup>39</sup> In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104.

Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

<sup>40</sup> See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

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additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.<sup>41</sup> Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.<sup>42</sup>

### Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who

<sup>41</sup> Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

<sup>42</sup> 8 CCR 1505-1, at 26.5.4, adopted August 4, 2005. See also 1-2-509(3) C.R.S.

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registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.

RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

### **D. Verification of Provisional Ballots**

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

### **E. Post-election Information for Voters**

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### **F. State Laws Governing Litigation over Provisional Voting**

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

### **Broader Considerations**

#### **G. Integrity and the Appearance of Integrity**

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.

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2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

## H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma<sup>43</sup> or the Baldrige Quality process<sup>44</sup> to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
  - Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
  - Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
  - Measures of variance among jurisdictions.
  - Number of poll workers trained in administration of provisional voting by polling place
  - Number of jurisdictions posting information on provisional voting in the polling place
  - Time required to evaluate ballots by jurisdiction

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<sup>43</sup> Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

<sup>44</sup> The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

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Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

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For Review by the Standards Board and Board of Advisors

## ATTACHMENT 1 – Data Sources for Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state's use of provisional ballots:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and included it in our analysis.

### New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting,<sup>45</sup> but condensed its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We included in the list of "Old States" all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they

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<sup>45</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

<b>Table 1 CATEGORIZATION OF STATES -- Old and New</b>		
<b>Old States</b>	<b>New States</b>	<b>HAVA Exempt or NA</b>
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
<b>26</b>	<b>18</b>	<b>7</b>



# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>46</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

## Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois <sup>47</sup>	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
<b>17</b>	<b>26</b>	<b>7</b>

<sup>46</sup> "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

<sup>47</sup> In Illinois, it is not clear that all counties followed this procedure. Some counties may not have counted out-of-precinct ballots.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

<b>Signature Match</b>	<b>Data Match</b>	<b>Affidavit</b>	<b>Return with ID</b>	<b>NA</b>
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

029009

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

<b>Table 4</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>48</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>49</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>50</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>48</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>49</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>50</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

029010

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Data Differences


The data used in this study differ from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

<b>State</b>	<b>EDS Numbers Cast/Counted</b>	<b>Our Numbers Cast/Counted</b>	<b>Differences</b>	<b>Updated Info from State?<sup>51</sup></b>
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

<sup>51</sup> Data not provided by the state itself is taken from Electionline figures.

029011

Karen Lynn-Dyson/EAC/GOV  
05/18/2006 12:43 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, foley.33@osu.edu,  
ireed@rutgers.edu, "Johanna Dobrich"  
bcc Adam Ambrogii/EAC/GOV  
Subject Re: Voter ID Report and Appendices 

Tom-

As was just discussed, the EAC's Commissioners have elected to delay a presentation of Eagleton's report on Voter Identification to the EAC Board of Advisors and Standards Board, at this time.

The Commissioners will spend time over the next several weeks reviewing and considering this report in great detail and will make a determination, shortly thereafter, regarding how they wish to proceed with the issuance of an EAC report on this study.

Many thanks to you and your staff for the work that has been done. We look forward to next week's presentation of the Eagleton/Moritz study of provisional voting.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/17/2006 09:25 AM

To klynndyson@eac.gov  
cc tokaji.1@osu.edu, foley.33@osu.edu,  
lauracw@columbus.rr.com, "Tim Vercellotti"  
<tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu,  
davander@eden.rutgers.edu, dlinky@rci.rutgers.edu,  
ireed@rutgers.edu, joharris@eden.rutgers.edu,  
john.weingart@rutgers.edu, rmandel@rci.rutgers.edu,  
"Johanna Dobrich" <jdobrich@eden.rutgers.edu>  
Subject Voter ID Report and Appendices

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

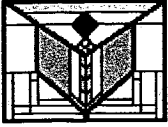
Tom O'Neill

029012



Appendices517.doc VoterIDReport05170910.doc

029013



Adam Ambrogi /EAC/GOV  
05/19/2006 12:45 PM

To Hvonspakovsky@fec.gov  
cc  
bcc  
Subject EAC Standards Board

Commissioner:

Hope all is going well in your new position-- I wanted to get to you the agenda for the Standards Board meetings next week. The Board of Advisors is occurring concurrently, so you can feel free to wander, or to stay at one of the meetings-- the same information will be presented in each meeting.

Let me know if you have any questions.

Best regards,  
Adam



2006 Standards Board agenda.doc

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

029014



HvonSpakovsky@fec.gov

05/19/2006 02:34 PM

To aambrogi@eac.gov

cc

bcc

Subject Re: EAC Standards Board

Adam,

thanks for sending this; I am going to try to stop by. How are you doing on finding another post? Did you ever talk to Commissioner Walther at the FEC?

Hans

aambrogi@eac.gov

05/19/2006 12:45 PM

To Hvonspakovsky@fec.gov

cc

Subject EAC Standards Board

Commissioner:

Hope all is going well in your new position-- I wanted to get to you the agenda for the Standards Board meetings next week. The Board of Advisors is occurring concurrently, so you can feel free to wander, or to stay at one of the meetings-- the same information will be presented in each meeting.

Let me know if you have any questions.

Best regards,

Adam

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Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission

029015

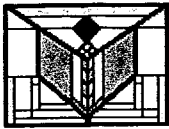


1225 New York Ave. NW - Suite 1100  
Washington, DC 20005



202-566-3105 2006 Standards Board agenda.doc

029016



Adam Ambrogi/EAC/GOV  
05/22/2006 09:05 AM

To "Caldwell, Theresa"  
<Theresa.Caldwell@mail.house.gov>@GSAEXTERNAL  
cc  
bcc  
Subject REMINDER: Congressman Jackson's show, 5/22, 2pm

Theresa:

Questions/Issues: (Sorry they're a little late)

There have been concerns about both machine failure and pollworker training in the recent primary in Chicago-- what is the EAC doing to focus on these concerns, and how do you believe local election officials are meeting the challenge, and what can ordinary citizens do to assist the process.

What can voters do best to protect their right to vote on election day? What should they bring with them and what information should they know?

(There is, of course the voter identification issues that have been debated on the country with conservatives largely concerned about voting fraud, and liberals largely concerned about voter access. Can you comment on this debate?)

I've heard about a new requirement for provisional voting? What does this mean, and if I'm a voter, and told I can't vote, how do I cast a provisional vote?

You recently authored a New York Times opinion piece (along with Fair Vote President John Anderson) recommending that all high school graduates be registered to vote (to be effective on their 18th birthday). What do you think can be done with that recommendation in the states, and why did you come to that opinion.

You were recently in Ohio to observe the federal primary. Do you see different issues in different states, or are the problems based on the technology used or procedures promulgated?

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Caldwell, Theresa" <Theresa.Caldwell@mail.house.gov>



"Caldwell, Theresa"  
<Theresa.Caldwell@mail.house.gov>  
05/18/2006 03:02 PM

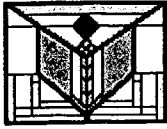
To  
cc  
Subject REMINDER: Congressman Jackson's show, 5/22, 2pm

Hello there! I won't be in the office tomorrow, so I thought I would send you a note just to make sure everything is still all set for Monday's taping of "Perfect Union."

029017

*Theresa Caldwell*  
*Deputy Communications Director*  
*Office of Congressman Jesse L. Jackson, Jr.*  
*202-225-0773*

029018



Adam Ambrogi/EAC/GOV  
06/12/2006 10:05 AM

To wang@tcf.org  
cc  
bcc  
Subject FYI

I don't know if you had heard about this but in NCSL's annual conference, they're having a piece on Voter ID and fraud issues. I don't know who's on that panel, but I thought I would let you know, since so much of that work is being done through the state legislatures. Hope all is well, and thanks for the updates....

<http://www.ncsl.org/annualmeeting/agenda/showmain3.cfm?requesttimeout=90>

## Tuesday, August 15, 2006

**10:15 am - 5:15 pm Redistricting & Elections Committee**

### ***Supremes Rule on Re-Redistricting of Texas***

10:15 am - 11:30 am

Three years after the highly publicized redrawing of Texas congressional districts, the U.S. Supreme Court ruled in June on whether the Legislature acted unconstitutionally. How will the decision alter the redistricting process? What subtle, but critical, lines were buried in the text of the opinions?

### ***Legislative Competition and the role of Gerrymandering?***

11:30 am - 12:45 pm

Are legislative elections really less competitive today than in the past? Is gerrymandering the culprit or one of many reasons. New research helps put the redistricting factor in perspective.

### ***Are Voters Who they Say they Are?***

1:00 pm - 2:00 pm

Many states continue to look at the issue of voter ID and struggle with balancing the need for maximum access to the polls with trying to eliminate any possible fraud. How big is this problem and what are states doing about it?

### ***Will Fall Elections Run like Clockwork?***

2:00 pm - 3:00 pm

Since the controversial 2000 election debacle, most states have implemented key election reforms to shore up the system and respond to federal legislation. Will this fall's 2006 election go off without a hitch or will new problems emerge in the voting process?

### ***What's Next in Redistricting Technology***

3:15 pm - 4:15 pm

Redistricting software vendors will preview and demonstrate what they are planning for 2010. They will be discuss things like the next generation of redistricting technology with support for desktop, Web based and PDA/Cellular applications.

### ***Countdown to Census 2010***

4:15 pm - 5:15 pm

Speakers: Linda Franz, Geographer, U.S. Census Bureau, Washington, D.C.  
Bob LaMacchia, Chief, Geography Division, U.S. Census Bureau, Washington, D.C.  
Cathy McCully, Chief, Census Redistricting Data Office, U.S. Census Bureau, Washington,

029019

D.C.

## **Wednesday, August 16, 2006**

**10:15 am - 11:30 am Redistricting & Elections Committee**

### ***Are 527s Here to Stay?***

In many states, the so-called 527 groups are likely to play a major part in this fall's campaigns. What are they? Should they be regulated? Can they be regulated? What are states doing in this area?

### **2:45 pm - 4:15 pm Money and Politics**

As ethical scandals over campaign contributions and influence-buying swirl around Washington, D.C., states once again take the lead in finding new solutions to an old problem. This session will highlight states' innovative ideas for regulating money in politics and the role of lobbyists in fundraising and campaigns.

## **Friday, August 18, 2006**

**8:30 am - 10:00 am General Session and Breakfast**

### ***SPEAKERS :***

Peter Hart has been one of the country's leading public opinion analysts for more than 27 years. He conducts all public opinion polling for NBC News and The Wall Street Journal. His focus is public policy, cultural and social issues, and strategic consulting for corporations, including Time Warner, Microsoft, Kodak to name a few.

Frank Luntz is one of the most honored communications professionals in America today. Named one of the four Top Research Minds by Business Week magazine, he pioneered the Instant Response focus group research technique, and won an Emmy Award in 2001 for his 100 Days, 1000 Voices segments on NBC's primary and election night coverage.

-----  
Adam D. Ambrogio  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

029020



"Tova Wang"  
<wang@tcf.org>  
06/12/2006 05:00 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: FYI

Thanks Adam. I've been trying to get Tim Storey about this, but with no luck so far. Any news with you?  
Tova

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

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Monday, June 12, 2006 9:06 AM  
**To:** wang@tcf.org  
**Subject:** FYI

I don't know if you had heard about this but in NCSL's annual conference, they're having a piece on Voter ID and fraud issues. I don't know who's on that panel, but I thought I would let you know, since so much of that work is being done through the state legislatures. Hope all is well, and thanks for the updates....

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### ***Will Fall Elections Run like Clockwork?***

2:00 pm - 3:00 pm

Since the controversial 2000 election debacle, most states have implemented key election

029021

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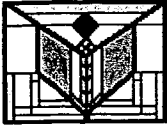
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029022

Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

029023





Adam Ambrogi/EAC/GOV  
06/20/2006 03:01 PM

To "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>  
cc  
bcc  
Subject State election fraud statute collection?

Dear Craig:

Hope is well with you. Hoping that you can help us out with a quick request from a member of congressional committee. They would like to know if there exists a list (compendium or index) of state election laws on crime and fraud specifically. They are trying to get access to such a list as soon as possible, for a Congressional hearing on Thursday. If no list exists to your knowledge, that's great. If it does exist, and we can get access to it, please let me know.

Thanks so much, Craig. I hope all is well.  
Best,  
Adam

---

Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

029024



"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>  
>

06/20/2006 05:43 PM

To aambrogi@eac.gov

cc

bcc

Subject Re: State election fraud statute collection?

I am currently in Europe on official DOJ business. Please call Nancy Simmons, 202-514-1440. We have what you request -- I think, and if we do she can e-mail it to you.

-----  
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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

From: aambrogi@eac.gov <aambrogi@eac.gov>  
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>  
Sent: Tue Jun 20 15:01:40 2006  
Subject: State election fraud statute collection?

Dear Craig:

Hope is well with you. Hoping that you can help us out with a quick request from a member of congressional committee. They would like to know if there exists a list (compendium or index) of state election laws on crime and fraud specifically. They are trying to get access to such a list as soon as possible, for a Congressional hearing on Thursday. If no list exists to your knowledge, that's great. If it does exist, and we can get access to it, please let me know.

Thanks so much, Craig. I hope all is well.  
Best,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

029025



Adam Ambrogi/EAC/GOV  
06/20/2006 07:03 PM

To "Thomas Hicks" <"Hicks, Thomas"  
<thomas.hicks@mail.house.gov>

cc

bcc

Subject Fw: list of state election crimes

Tom:

Doesn't look like there's a state list of fraud statutes-- there's a federal one.

(See below.)

It's something we have planned to do, but have not completed. What's your timeline and priority? I could pull something together...

AA

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

---

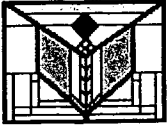
----- Original Message -----

**From:** "Simmons, Nancy" [Nancy.Simmons@usdoj.gov]  
**Sent:** 06/20/2006 06:52 PM  
**To:** Adam Ambrogi  
**Cc:** Margaret Sims; Donsanto, Craig" <Craig.Donsanto@usdoj.gov>  
**Subject:** list of state election crimes


Adam, Craig thought you were looking for a list of federal statutes, which are discussed in our election fraud manual. We don't have lists of state election crimes. Craig suggests that you contact Peggy Sims at the EAC - she's a wonderful resource, and I'm including her in my reply. Good luck.

Nancy

029028



Adam Ambrogi/EAC/GOV  
06/28/2006 02:11 PM

To Bryan Whitener/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: MAY 23, 2006 Standards Board Meeting 

Thanks! Do you or Joyce have the one from the 24th??  
Thanks much,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV  
06/28/2006 02:04 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc  
Subject Fw: MAY 23, 2006 Standards Board Meeting

Adam, here's the transcript attached below.

----- Forwarded by Bryan Whitener/EAC/GOV on 06/28/2006 02:04 PM -----

Joyce Wilson /EAC/GOV  
06/26/2006 04:41 PM

To Bryan Whitener/EAC/GOV@EAC  
cc  
Subject Fw: MAY 23, 2006 Standards Board Meeting



Joyce H. Wilson  
Staff Assistant  
US Election Assistance Commission  
202-566-3100 (office)  
202-566-3128 (fax)

----- Forwarded by Joyce Wilson/EAC/GOV on 06/26/2006 04:41 PM -----



"Carol J. Thomas Reporting"  
<carolthomasreporting@cox.net>  
06/26/2006 03:53 PM

To jwilson@eac.gov  
cc dromig@eac.gov  
Subject MAY 23, 2006 Standards Board Meeting

029027



Dear Ms. Joyce Wilson,

Attached please note the ASCII file for the Standards Board Meeting taken on Tuesday, May 23, 2006.  
Your transcript has been shipped to you.

ASCII file name: 052306.txt

Please let us know if you have any questions.



Timothy Brischler, Office Manager, 703.273.9221 052306.TXT



Bert A. Benavides/EAC/GOV  
08/21/2006 05:09 PM

To PDegregorio@eac.gov, Donetta L. Davidson/EAC/GOV,  
Gracia Hillman/EAC/GOV, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
cc Edgardo Cortes/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV, Sheila A. Banks/EAC/GOV, Elieen L.  
Colliver/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV,  
bcc

Subject Commissioners' Staff Briefing for 8-24-06

Commissioners' Staff Briefing: Thursday, 8-24-06  
9:30 AM - 11:30 AM EST, Small Conference Room

● Commissioners DeGregorio, Davidson and Hillman will participate .

- |   |                                       |
|---|---------------------------------------|
| 1. CA Appeal (EC / MS)                    | Mats to be distributed by COB 8-02-06 |
| 2. Vendor Responses (BH)                  | Mats to be distributed by COB 8-22-06 |
| 3. Indirect Cost Response Policy (MS)     | Mats to be distributed by COB 8-22-06 |
| 4. Eagleton Update (KLD)                  | Mats to be distributed by COB 8-22-04 |
| 5. Gov Works Update (KLD)                 | No materials                          |
| 6. Addition to NAS Contract (TW/KLD)      | No materials                          |
| 7. September Public Mtg Draft Agenda (TW) | Draft Agenda attached                 |
| 8. Private Briefing (Tom/Gavin)           | No materials                          |



Public Mtg, St. Louis, MO, 9-21-06 - DRAFT AGENDA.doc

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
202.566.3114 direct line  
202.566.3128 fax  
bbenavides@eac.gov

029029



"Daniel Tokaji"  
<tokaji.1@osu.edu>  
03/17/2006 01:51 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject RE: Martinez ELJ Submission

Will do. I didn't have time to review the final version before it went to you guys, but will do so. The last one I read was an improvement over prior drafts.

Daniel P. Tokaji  
Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
614.292.6566  
<http://moritzlaw.osu.edu/blogs/tokaji/>

---

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Friday, March 17, 2006 12:05 PM  
**To:** tokaji.1@osu.edu  
**Subject:** RE: Martinez ELJ Submission

Dan:

Also, I know we talked about this before, but I just received a draft of the Eagleton ID Provision piece. If you have comments or follow-up, pls let me know...

Thanks.  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Daniel Tokaji" <tokaji.1@osu.edu>

03/17/2006 11:21 AM

To aambrogi@eac.gov  
cc  
Subject RE: Martinez ELJ Submission

029030

Adam: Just read this and think it's perfect. Thanks to both you and the Commissioner! Dan

Daniel P. Tokaji  
Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
614.292.6566  
<http://moritzlaw.osu.edu/blogs/tokaji/>

---

**From:** aambrogi@eac.gov [mailto:aambrogi@eac.gov]  
**Sent:** Thursday, March 16, 2006 6:43 PM  
**To:** tokaji.1@osu.edu; lowenstein@law.ucla.edu; mathews@law.ucla.edu; Rick.Hasen@lls.edu  
**Cc:** rmartinez@eac.gov  
**Subject:** Martinez ELJ Submission

Prof. Hasen, Lowenstein, and Tokaji:

Attached please find the submission of the Martinez Submission to the Election Law Journal's Mortiz Edition.

We apologize for turning in this paper late; we have unfortunately been occupied with a series of fast-moving election administration events (largely beyond our control). That said, we believe this to be a strong, well researched piece that makes an important statement, and are proud to submit it for consideration.

We are, of course, open to any edits that you may have to this papers, and as to structure, or footnoting improvements. I will provide your staff with any items that you may need to keep "on file" that are not readily available in the public for the cited material. I have taken the opportunity to do a generic law review style format, but you can obviously alter that as per ELJ's specifications. I have limited the "short cite" format-- because the piece isn't terribly long, but I have attempted to follow the Bluebook as much as possible.

Again, I know that Commissioner Martinez truly appreciates the opportunity to write for the ELJ, and the encouragement that you all have provided him to get this piece done. We welcome your comments, and will be happy to work with you on further improving this piece.

Very truly yours,  
Adam Ambrogi

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

029031



**1S-2.025 Voter Fraud Complaints.**

(1) The Division of Elections is charged with maintaining a voter fraud hotline, pursuant to Section 97.012(12), F.S. Any person that contacts the voter fraud hotline will be asked if he wishes to file a complaint alleging voter fraud. For purposes of this rule, "voter fraud" means intentional misrepresentation, trickery, deceit, or deception, arising out of or in connection with voter registration or voting, and the prescribed offenses set forth in Chapter 104, F.S. "Voter fraud" does not include violations of Chapter 106, F.S.

(2) A person acts "intentionally" if he knew or reasonably should have known that the act in question constitutes voter fraud and is prohibited by Chapter 104, F.S.

(3) Any person alleging voter fraud may file a written complaint with the Division using Form DS-DE 34, titled "Complaint, Voter Registration or Voting" (Eff. 9/98), which is hereby incorporated by reference and available from the Division at Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250. To be legally sufficient, a complaint must:

(a) Allege an act or acts of voter fraud as defined in subsection (1) above; and

(b) Contain allegations that have been stated with particularity. Mere recitation of statutory language, vague generalizations, absence of specific facts, or hearsay will not support a legally sufficient complaint.

(4) If the Division determines that the complaint is legally sufficient, it shall forward the complaint to the Florida Department of Law Enforcement for further investigation. Otherwise, the Division shall dismiss the complaint for legal deficiency.

*Specific Authority 106.22(9) FS. Law Implemented 97.012(12), 106.22(11) FS. History—New 9-21-98.*

# **Florida Voter Fraud Issues**

## **An FDLE Report And Observations**

### **January 5, 1998**

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#### **Overview:**

With the passage of the 1993 National Motor Voter Law followed by Florida's own implementation legislation (Chapter 94-224, Laws of Florida) to comply with the National Motor Voter Law, the process by which one may register to vote or update one's registration has been greatly simplified. Unfortunately, the simplifications implemented also make it easier for possible fraud since once one is registered, the Motor Voter Laws also made absentee ballots available for any reason. The nation and this state must now reconcile the clash between the philosophy of the Motor Voter laws in promoting virtually "no questions asked" voter registration and voting, with the significant potential for fraud and corruption such a system has promoted.

The Department of Law Enforcement is not charged with principal responsibility to monitor Florida election issues, and does not hold itself out to be the expert agency on election law issues. The Department has, in the past several years, been called upon several times to conduct criminal investigations of specific allegations of election fraud or other misconduct, and has noted basic "trends" in election fraud both within Florida and across the nation.

The following is offered by FDLE to prompt debate and consideration of the issue whether, based on the nation's and Florida's experience since 1993, more protections to help prevent fraud are needed in our election laws. Recognizing that Florida's options may be somewhat restricted by the national law's requirement, and concerns about avoiding a "dual registration system" in which certain standards apply for state elections while others apply for federal elections, FDLE suggests that more registration and absentee ballot integrity protections are required if Florida voter fraud is to be reduced.

#### **The Basic Types Of Fraud Encountered:**

FDLE's experience in recent years, including cases predating the 1993 and 1994 "Motor Voter" changes, suggests the areas that are "ripe" for potential fraud fall primarily into these categories:

- **Voter Registration Fraud:** – Minimal identification and citizenship proof requirements provide ample opportunity for voter registration fraud. This includes specialized "changes of address" done solely to allow a vote in a particular election, when in fact, no actual change of address has occurred.
- **Absentee Ballot Fraud:** – The desire to facilitate the opportunity for each person to vote has resulted in increased opportunity to use absentee ballots improperly. (Once one has registered fraudulently, he or she can obtain an absentee ballot for every election thereafter if he or she wishes. The lack of "in-person, at-the-polls" accountability makes absentee ballots the "tool of choice" for those inclined to commit voter fraud.)
- **Illegally or Improperly "Assisting" Others To Vote Their Absentee Ballot:** – Those inclined to do so can capitalize on others' access to an absentee ballot by voting their ballot for them, often with the actual voter not knowing what has occurred. This offers tremendous opportunity for vote fraud, particularly to those who have access to the ill or infirm or those who do not have the ability to resist the influence of another as they are urged to vote in a "required" manner. It also encourages those inclined to commit voter fraud to seek to utilize absentee ballots provided to those whose interest in voting is marginal or non-existent.
- **Vote-Buying:** - Securing votes by payment or other "rewards" or the "selling of one's vote"– is an age-old problem that still exists.

This report does not address campaign financing concerns. The Florida Legislature through CS/HB 461, 281 and 75 (Chapter 97-13, Laws of Florida), implemented several campaign finance reforms. These reforms were a step in the right direction, and while more campaign finance reform may be desirable, the focus of this report is on voter fraud concerns. 1

We are not alone in experiencing voter fraud problems. The State of California has been dealing with similar issues, as has the State of Georgia, among other states. Some of the potential responses under consideration in those states will be identified for consideration of whether they should be implemented in Florida.

**A Realization—Voter Fraud Has Greater Impact On Local Elections But It Affects The Integrity Of Our Democracy In All Elections.**

The impact of fraud on elections is more often and most significantly felt in local elections. It is in municipal or county elections that the difference of a relatively small number of ballots can change the election results. It is in such elections that anyone prone to committing fraud can anticipate that the fraudulent activity may pay off with his or her candidate of choice being elected by reason of the activity. However, many national elections or statewide elections have been settled by a relatively small vote margin. If the options for fraud are not adequately preempted by criminal sanctions, greater voter registration integrity efforts, or other steps, the public's confidence in the integrity of our free election system could be lost. Few issues strike so closely to the heart of our democracy as does the issue of maintaining fair and legitimate elections.

In a 1975 case involving an election whose outcome hinged on the validity of absentee ballots, the Florida Supreme Court discussed the basic issues of preserving the sanctity of the ballot and the integrity of our elections process. The Court's discussion remains as timely as ever. In Boardman v. Esteva, 323 So.2d 259 (1975) the Court included at page 269 of its opinion a review of the essentials necessary to maintain a valid election:

**In summary, we hold that the primary consideration in an election contest is whether the will of the people has been effected. In determining the effect of irregularities on the validity of the absentee ballots cast, the following factors shall be considered:**

- (a) the presence or absence of fraud, gross negligence, or intentional wrong doing;**
- (b) whether there has been substantial compliance with the essential requirements of the absentee voting law; and**
- (c) whether the irregularities complained of adversely affect the sanctity of the ballot and the integrity of the election.**

**The underlying concern of the election officials in making the initial determination as to the validity of the absentee ballots is whether they were cast by qualified registered voters, who were entitled to vote absentee and did so in a proper manner.**  
(Emphasis added.)

Indeed, the essential responsibility in Florida elections is to assure that ballots are cast by qualified registered voters, who were entitled to vote, and who have done so in a proper manner. With the continued movement toward more relaxed voting standards and methods, it is important that Florida also realistically addresses the potential for fraud in a manner that assures this responsibility is met.

**FDLE's Historical Perspective—A Brief Review of Cases of Interest**

**MIAMI, November, 1997, Mayoral Elections.** This case is still active and details of the investigation cannot be revealed. However, the basic allegations of

election misconduct are known and can be generally discussed. The primary allegation is that absentee ballots were being made available for sale and that absentee ballots were being purchased by person(s) supporting one or more candidates in the election. By reason of the investigation into the specific allegations that surfaced, FDLE determined there appeared to be widespread absentee ballot voter fraud in the City elections.

The types of absentee ballot voter fraud alleged to have occurred include:

- **Someone voting on behalf of someone else.**
- **The purchasing or selling of absentee ballots or another's vote.**
- **Non-City of Miami residents voting.**
- **Changing of ballots.**
- **False statements or information being provided with regard to address information or changes of addresses on voter registrations.**
- **Possible use of certain addresses within the City limits as the "new address" for persons not residing within the City; done with the apparent sole purpose of permitting voting in the municipal election.**
- **Voting by absentee ballots under the name of deceased persons.**
- **Voting in the election by non-U.S. citizens.**

The allegations currently under investigation could constitute criminal violations, including, but not necessarily limited to, these violations of Chapter 104:

- **False swearing; submission of false voter registration information (a 3<sup>rd</sup> Degree felony; F.S. 104.11);**
- **Changing an elector's ballot (a 3<sup>rd</sup> Degree felony, F.S. 104.021);**
- **Fraud in connection with casting of a vote (a 3<sup>rd</sup> Degree felony, F.S. 104.041);**
- **Corruptly influencing voting (a 1<sup>st</sup> Degree felony, F.S. 104.061);**
- **Voting a fraudulent ballot (a 3<sup>rd</sup> Degree felony, F.S. 104.16);**
- **Perjury-related violations (1<sup>st</sup> Degree misdemeanor, F.S. 837.012)**

While not engaged in the criminal investigation, the Dade County Grand Jury is reviewing the matter with an intent to recommend improvements in the local elections process. A challenge seeking to overturn the recent election is pending in court in Miami. After the fact that the Miami election was under investigation became known, similar allegations regarding other elections held in Dade County have been received by FDLE and are under review. Two arrests have been made in the subject investigation, with further arrests anticipated.

**HIALEAH 1993 November Mayoral Elections:** Allegations were made regarding the use of absentee ballots which were cast during the 1993 runoff election, and with regard to particular campaign workers who witnessed the ballots. The basic misconduct alleged was that campaign workers were witnessing ballots that were not completed in their presence, and that campaign workers were completing ballots or causing ballots to be completed without the actual voter's knowledge or assent for the vote as cast. The matter was reviewed by the Dade State Attorney's Office, which obtained a transfer to the Palm Beach State Attorney's Office pursuant to an Executive Order of the Governor on the

029037

basis of a conflict by reason of a personal relationship between one of the subjects of the allegation and the State Attorney. The matter was also reviewed by the U.S. Attorney's Office.

No criminal charges were filed, but the election was invalidated by a civil court. A final report issued on September 30, 1996, by the Palm Beach State Attorney's Office included in its summary this finding:

**The decision not to file charges should not be considered as an endorsement of the conduct of this election. However, it is not within the jurisdiction of this office to condemn the actions of campaign workers who may have engaged in unethical conduct. We leave for others to determine whether this is conduct that we want to condone in our society. Until such time as the legislature addresses the inadequacies of the present legislative authority, the State is not authorized to address this matter in criminal court....**

**DAYTONA BEACH 1993 Commission Election:** FDLE's investigation established grounds to believe that campaign supporters obtained a number of absentee ballots and solicited votes prior to election day. The investigation led FDLE to believe that the candidate himself distributed the ballots, influenced the marking of ballots and obtained signatures of persons as witnesses who did not actually witness the elector's casting and signing of his or her absentee ballot. Some ballots were witnessed only by one witness. A Volusia County Grand Jury heard the case and issued a Presentment, while not indicting any persons involved. The Grand Jury expressed concerns that conduct such as the witness irregularities, the number of absentee ballots outstanding, the direct handling of such ballots by a candidate and his campaign workers, were not more specifically prohibited by Florida law.

**HARDEE COUNTY 1992 Sheriff's Election:** FDLE's investigation established grounds to believe that three campaign supporters obtained a quantity of absentee ballots on behalf of their candidate and subsequently solicited votes prior to the election. A number of these ballots were found to contain irregularities involving the witnessing. In some cases, the actual vote (via a punch out ballot) was completed by the campaign supporter. A Hardee County Grand Jury reviewed the case that no criminal intent was involved. A new election was ordered, however.

**DIXIE COUNTY 1992 Sheriff's Election:** FDLE's investigated allegations that a campaign supporter obtained a number of absentee ballots and then took them to sick and elderly throughout the county and "assisted" them in voting. During the process they were encouraged to vote for a specific candidate. The worker then allegedly took the ballots and later had them falsely witnessed. No compensation for the "votes" was made. No one was arrested in this matter.

**BAKER COUNTY 1990 School Board Election:** One arrest and conviction resulted from this investigation which demonstrated that a campaign supporter

recruited and transported voters to the County Courthouse where they obtained an absentee ballot to be marked in accordance with the worker's directions. In return, each such voter was paid \$10 by the campaign supporter.

**DIXIE COUNTY 1988 Supervisor of Elections Election:** One arrest and conviction in federal court resulted from this investigation. The investigation established that the Supervisor of Elections, herself a candidate, gave groups of absentee ballots to selected supporters. These were taken to poor and infirm voters where, in exchange for \$10 to \$20, the voters' votes were secured. The absentee ballots were witnessed by campaign workers and then returned to the candidate, the Supervisor of Elections.

**LAFAYETTE COUNTY 1984 County Commission Election:** Five arrests and convictions in federal court resulted from this vote-buying investigation. The supporter of a candidate secured a large number of absentee ballots and took them to the poorer sections of the county. For a payment of \$25 to \$35 and a bottle of whiskey, supplied by the candidate, a voter's vote was "bought." The voter completed the absentee ballot, and the candidate's worker would have the ballots falsely witnessed later prior to return to the Supervisor of Elections.

***Observations and Concerns Derived From FDLE's Investigations***

- **The absentee ballot is the "tool of choice" for those who are engaging in election fraud.**

The absentee ballot's very nature makes it the mechanism to use when trying to capitalize on a voter's infirmities or desire to make some quick money. Both federal and Florida law make absentee ballots available to anyone who seeks them, with no requirement of "justification" for not appearing in person at the polls. Given this easy access to absentee ballots, the "tool of choice" will remain popular among those who corrupt the elections process.

- **The absentee ballot's integrity is only as good as the weakest link in the voter registration process, and the voter registration process is extremely open to fraud and abuse.**

Once registered to vote, any person may request and utilize an absentee ballot without ever having to appear in person to vote. If the voter registration process does not require significant proof of citizenship, address, and identity, then those inclined to commit fraud will capitalize on the process by successfully registering those who have no right to vote, and then "facilitate" their (illegal) vote by absentee ballot.

- **Voter registration and absentee ballot fraud can be expected to increase unless steps are taken to stop it.**

Voter registration fraud is occurring throughout the nation. The National Center For Policy Analysis' "Policy Digest" for December 1996-February 1997 related that multi-state voting, fake registrations, and repeat voting by an individual in the same election are becoming problems. It reports that in Chicago, 150,000 voters registered more than once, with 90,000 registering three or more times. Thousands of mentally handicapped voters were assisted in registering in Illinois. In reality, it appears that Florida's ability to maintain the integrity of its voter registration rolls may be no better than Illinois'. If this is the case, then perhaps Florida should review how truly effective its current efforts at maintaining voter registration integrity are, and consider options such as specialized audits of registration rolls or other efforts to avoid problems like those encountered in Chicago. While the national Motor Voter Law may restrict the state's ability to "cull" its voter registration rolls to the extent the rolls once were reviewed and updated, focused efforts to assure integrity may still be done.

- **The elderly are often exploited by others to commit absentee ballot fraud.**

It appears that the elderly voter or elderly witness to another's absentee ballot are often targeted for use in fraud schemes, perhaps because some of these voters may be easily manipulated or influenced by those in whom they have previously placed their trust. Such persons might be a condominium association representative, a community "leader," or even just a stranger who approaches an elderly person with an absentee ballot in hand.

- **Those fighting fraud should utilize the sense of community identity and pride to make citizens more aware of how they can help prevent voter fraud.**

Many Floridians may not be aware of how their timely report of suspected wrongdoing could facilitate the discovery of voter fraud before it occurs or as it is occurring. Such timely reporting could stop problems before they grow to the point that an entire election's integrity is questioned. A greater emphasis on promoting a "zero tolerance" to voter fraud in all of Florida is needed, with an appeal to each voter's sense of community and civic pride as a means of motivating citizen interest in assisting in the state's anti-fraud efforts. An explanation of why a zero tolerance is so important could help citizens understand their responsibilities in fighting fraud.

- **Under current law, there is little effective review of what is claimed on one's registration form.**

Relatively easy change-of-address procedures, implemented by the motor voter laws, makes it easy to "move" into an election zone for the express purpose of voting in a particular local election, with little or no scrutiny of whether the "move" is truly legitimate or not. Indeed, the recent changes in the registration



requirements have eliminated virtually any ability by Supervisors of Elections to independently verify whether the information provided on a registration form is in fact, accurate.

- **Additional steps to prevent absentee ballot fraud are needed.**

In 1996, Florida made numerous revisions to Chapter 101, attempting to address absentee ballot fraud and related issues. A limit of no more than two absentee ballots per election may be secured by a third party other than a member of one's immediate family. F.S. 101.62(4)(b). However, under F.S. 101.62(1), a person may request, with no verification, in person, by phone or by mail a personal absentee ballot. Under F.S. 101.64, the requirement that an absentee ballot be witnessed by a notary or two separate witnesses has been eliminated. Now, only one witness need to sign an absentee ballot. With no more scrutiny or justification for such a ballot than is provided by current law, easy access to absentee ballots remains a reality in Florida. Any person may pick up the phone and request an absentee ballot, no questions asked. Unfortunately, any person inclined to use that ballot fraudulently, may now do so with less fear of becoming known than in the past when tighter standards were applied.

- **Florida's present registration and absentee ballot procedures lack safeguards that could help prevent fraud.**

To a great extent, Florida's absentee voting and voter registration is based on a "trust me" level of scrutiny. While the goal of incorporating more voters into the process is laudatory, perhaps we have begun to see that the "Motor Voter" approach is in need of returning some "common sense" safeguards to the registration and absentee ballot process. Those inclined to defraud the process are capitalizing on the philosophy of "easy registration and easy voting" under our current laws. It makes good sense that safeguards be implemented that recognize the potential for fraudulent exploitation of the elections process. If a ballot is only as good as the weakest link in the registration process, then should not Florida seek to better regulate, monitor, audit and investigate its voter registration process?

- **Florida requires little verification of registration information.**

Florida currently does not require a voter registrant to provide a Social Security number or Florida Driver's License number. In fact, in 1997, Florida dropped the requirement that a registrant provide gender, race or ethnicity information when registering. When registering, Florida requires merely an "indication" that the registrant is a U.S. Citizen, is not a convicted felon, or is not adjudicated mentally incapacitated. While submitting a false voter registration application is a third degree felony (as of 1/1/98), the current trend to require little if any verifying information at the time one registers makes effective auditing, review, or investigative follow-up virtually useless to pursue. (Florida law *allows* the

applicant to volunteer the information, but does not *require* that it be provided as a requisite for registration.) *In reality, Florida has implemented a standard that is in essence little more than "trust me at my word alone" in registering to vote.*

- **Non-Citizens registering to vote and voting is a national problem, and has been alleged to have occurred in Florida.**

The FBI and the U.S. Attorneys office in Dallas are examining whether non-U.S. citizens are on Dallas County's roll of registered voters, according to an Associated Press article by Michelle Mittelstadt, dated 9/19/97. The article reports that the investigation has been slowed because INS officials in Washington are refusing to cooperate with investigators. U.S. Attorney Michael Uhl sought INS assistance by comparing the computerized tape containing the names of those who voted in the Dallas County November, 1996 and May, 1997 elections against INS' computerized records to determine if voting by foreigners occurred. Assuming that cooperation between the INS and the U.S. Attorney's office can be restored, the results of Dallas' inquiry are worth watching.

Non-U.S. citizens have registered, and have been found to have voted in other states. *Florida could be experiencing the same problem. (Non-citizen voting is one of the several allegations currently under investigation in regard to the Miami mayoral election.)* The federal Illegal Immigration Reform and Immigrant Responsibility Act (Title 18 U.S. Code, Section 611) makes it a federal crime for noncitizens to vote in federal elections, with maximum penalties of deportation or imprisonment. Likewise, Florida requires its registered voters to be United States citizens (F.S. 97.041) and criminalizes making a false voter registration (F.S. 104.011—a 3<sup>rd</sup> degree felony as of 1/1/98) but unless Florida (and other states) have a way to truly verify a registrant's eligibility with something more than the basic "trust me at what I've said" level of accountability, state and local officials can do little to stop the potential registration (and subsequent voting) fraud. In addressing this concern, Florida should consider requiring documented proof of one's citizenship when registering to vote.

- **Florida should consider capitalizing on its coming "centralized statewide voter file," by implementing significant additional safeguards.**

Florida has moved toward implementing a centralized statewide voter file. It is to be established and run by the Division of Elections as implemented under Chapter 97-13, Laws of Florida, which became effective 1/1/98. If, and when, all of Florida's voter registration records could be centrally housed in this file, then any polling place or registration processing site could maintain on-line access the central file to determine whether a person has already voted in a particular election or whether the person is registered to vote in more than one jurisdiction. If sufficient identifying information were available in the voter file, the file could be "run" against other state and federal databases to determine whether deceased

persons, convicted felons, or others appear to have been inappropriately maintained on the state's voter registration rolls. If sufficient identifying information were available in the voter file, routine audits of registration rolls could be performed to help identify areas of potential fraud concern.

However, since Florida's registration requirements do not include essential verifying information such as a Social Security Number, Florida Driver's License number, proof of becoming a naturalized U.S. citizen, or even race, gender, or ethnicity, the ability of any reviewer to truly determine one's identity in the voter file will be severely hampered, if not completely defeated. Consequently, if the voter file is to reach its full potential for fighting fraud, a requirement of significant registration verification information must be returned to Florida's voter registration procedures.

- **At-the-poll identity verification standards should be reviewed to determine if enhancement is warranted.**

Actual false impersonation at the polls continues to occur regularly, although use of absentee ballots appears to be the preferred method of committing fraud. While false impersonation is a felony, being able to prove the conduct is difficult. A poll worker's ability to recognize the person who showed up and voted under another's name is severely compromised by the sheer number of faces that poll worker will encounter on election day. Making a crucial identification of a perpetrator is a task that would tax virtually any person's memory or ability to recall. Poll workers are not experts at handwriting analyses, and most will confess that if a signature on a poll registry resembles the signature on a voter registration card or other signed identification, the presumption is that the person is in fact who he or she purports to be. There is no method of conducting even a cursory follow-up check on persons suspected by a poll worker.

Some system of identity verification should be warranted. When we seek to utilize a credit card, we may be asked a crucial piece of information normally known only to a few people, such as our mother's maiden name. Yet no such "identity check" verification option is included in our elections process. Poll workers have no "confidential" verification information upon which to rely when they suspect someone is not who he or she claims to be. Some sort of readily usable "verification" of identity information would greatly reduce the chances of one successfully voting under a false identity. Perhaps some sort of enhanced identity verification information could be incorporated in Florida's voter registration process.

**Other states' voter fraud responses and experiences.**

**California** has encountered similar problems. Their frustration with the present system appears to have reached a degree of crisis greater than Florida has expected to date. Among California's proposed or implemented responses are:

- **"Zero tolerance to voter fraud."** Bill Jones, Secretary of State in California has established a goal of "100 percent participation by all eligible California voters with a tough zero tolerance policy for fraud." <sup>2</sup>
  - **"Voter Fraud Hotline" and "Handbook."** As part of California's anti-voter fraud efforts, a statewide Voter Fraud Hotline (1-800-345-VOTE) has been established to allow any person to report any witnessed suspected election fraud or campaign abuses. The Secretary of State's Office in California has printed a small, pocket sized, "Voter Fraud Prevention Handbook" that briefly describes the requirements under law for registering to vote, voting at a poll, voting by absentee ballot, and "campaign do's and don'ts." <sup>3</sup> Included in the book's responses regarding "Absentee Ballots" is this advice: "...your vote is secret and you should not let anyone handle your ballot in any way...Pay close attention to deadlines, and under no circumstances permit any campaign workers to handle your ballot or fill in your choices. Be sure to refuse any offer from them to return your ballot for you. If they offer to do so, they are breaking the law. (EC Section 18371, 18403, 18577)." Florida is in need of similar and repeated advice to its citizens.
  - **"Voter Eligibility Verification Act."** In April, 1997, California saw introduced the "Voter Eligibility Verification Act." It seeks to provide local election officials the authority to make inquiries with the Social Security Administration and the Immigration and Naturalization Service to verify the citizenship of people who have submitted a voter registration application.
  - **Aggressive Anti-Fraud Efforts By The California Secretary of State:** In 1996, the California Secretary of State's Office uncovered evidence of voter fraud and dropped 727 noncitizens from the voter rolls. A few months later it discovered voting irregularities and ordered a complete review of Orange County, California's 1.3 million residents registered to vote in the state's general election.
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- **Federal elections subject to alleged fraud, too.** For example, in November, 1996, California Republican Representative Bob Dornan was deposed by Democrat Loretta Sanchez in an election determined by only a 984 vote margin. Dornan has alleged the crucial "upset" total resulted from "noncitizen voting."
  - **Georgia's response to voter fraud:** In a press release dated January 7, 1997, Georgia Secretary of State Lewis Massey announced his proposal of several anti-election fraud measures, including a provision which will require citizens to present identification before receiving a ballot at their polling place. Other changes proposed included making all election code violations a felony, increasing the maximum fine and imprisonment that could be imposed for such violations, including a printed warning to all absentee ballot instructions and return envelopes describing the penalties for vote buying or selling, and implementation of the U.S. Postal Service's National Change of Address or alternative database systems to insure the accuracy and timeliness of the state's voters list.
  - **Louisiana experiences:** Louisiana State Representative Louis "Woody" Jenkins has charged that 2,600 "phantom voters" and 10,000 more questionable ballots were cast in his U.S. Senate race, which he lost by 5,788 votes.

- **Illinois' experience:** As noted earlier in this report, Chicago has to deal with the reality that persons were registering to vote more than once, a substantial number of which had registered to vote three times in different precincts. Auditing efforts taken to assure the integrity of the voter rolls are being done.

**SUMMARY:** A balance between promoting the vote and maintaining the integrity of the elections process must be carefully secured. While Florida's move toward "Internet voting" and "voting by mail" represents a laudatory effort to expand the opportunity to vote, it also expands the opportunity to commit voter fraud. Absent the inclusion in voter registration records of significant personal identifier information that is not currently required of Florida voters, the opportunities to defraud the election process will abound through any voting method, be it absentee ballot, electronic voting, or by-mail voting. Indeed, with each step taken that does not include a process that requires sufficient identification verification, the opportunity for fraud increases.

The above-noted observations and concerns are based upon FDLE's experience in investigations and upon national trends. Below, developed in part upon FDLE's experience and drawn from a variety of sources, are several suggestions of ways in which Florida's elections process may be better protected against fraud. It is possible that some of the suggestions may already be in place in one form or another in some areas of the state. The suggestions are intended to promote debate and consideration of what steps are needed in our state and local elections processes to better insure the integrity of our elections.

**Anti-Fraud Steps Florida May Wish To Consider Implementing:**

- Promote a **"zero tolerance" approach to voter fraud** by making significant efforts to elevate community awareness and opportunity to report fraud.
- Enhancing the state's ability to ferret out potential fraud before it occurs **by implementing significant and meaningful proof requirements in voter registrations.** No longer simply accept one's "representation" that the form is correct. Instead, require proof of citizenship, and current residency. Is production of a Social Security card or a phone bill or power bill receipt showing one's residence too onerous a burden to place on one who seeks to vote? Surely not.
- Consider a "reverse absentee ballot process" that sends a **poll worker to the absentee voter** with the ballot. Instead of sending the ballot to "points unknown" and having it returned for after-the-fact verification that is less than acceptable, why not fund absentee ballot vote collection agents who will deliver a ballot upon request to any registered voter. The collection

agent could then wait while the ballot is completed and could serve as a state-bonded witness that the ballot has been filled out correctly by the person to whom the ballot was provided. The process might cost more in personnel time and expense, but after-the-fact ballot verification could be eliminated, thereby offsetting some of the costs, and the much greater value of substantially curtailing absentee ballot fraud could be obtained.

- As an alternative to the "reverse absentee ballot" idea, in the minimum, **return to an enhanced absentee ballot witnessing requirement.** An absentee ballot verification, including verification of the identity of the person voting, should be required, with the sealing of the ballot being witnessed by two or more witnesses or a notary, as was once the standard in Florida.
- All absentee ballots should have **prominently printed warnings** regarding the violations of law that could occur in their use, and the penalties attached.
- A **voter fraud hotline** like California's should be considered. The toll free number could be printed on all absentee ballots.
- **Make vote-buying and absentee ballot fraud too expensive for those inclined to do it by offering a reward of a substantial sum of money to any person providing information to law enforcement that results in the conviction of a person for voter fraud.** Make the state's payoff for information resulting in a conviction much greater than the profit from accepting a vote buying payoff or participating in absentee ballot fraud.
- Return to a requirement of **personal appearance before a government official to register to vote and require the registrant to produce sufficient verification** information.
- **Require drivers license and/or social security numbers on voter registration cards** and as part of the information contained on one's absentee ballot.
- Require **foreign-born citizens to provide their naturalization number** on their voter registration card.
- Require **documented proof of residency** in the form of a power bill, phone bill, or other regular mailing to the claimed address, in order to help prevent the "move" made for the sole purpose of voting in a local election.
- With implementation of sufficient specific voter registration verification information, **implement the state's centralized voter file to its greatest**

**extent**, including running voter registration records against all available government databases that could identify fraud attempts.

- With sufficient verification information in the data base, **place all poll voting places "on line"** to the data base for instant verification of registration status and to prevent multiple voting at different locations by the same person.
- **Commit to a statewide review of registration records to determine if non-citizens or others have wrongly registered to vote.** Consider offering a brief "grace period" in which any person who has illegally registered may, without fear of punishment, appear and voluntarily remove his or her name from the voter records. (Allow the person's name to be retained in the databases so that if he or she attempts to register at a subsequent date, the effort will receive special scrutiny to verify his or her eligibility to vote.)
- **Require proof of residency and identity** when appearing at a poll to vote AND when requesting an absentee ballot. **Issue the absentee ballot in the name of the verified requestor only, and prevent the requestor from voting any other way unless the ballot is returned unvoted.** Require, as necessary, additional information to verify identity, such as the person's mother's maiden name, etc.
- **Aggressively use existing databases and processes to identify those who claim they are not "residents" or citizens in order to be excused from jury duty or other obligations, then claim they are a resident or citizen for purposes of registering to vote.** Citizenship and its responsibilities should not be something one claims or denies when convenient.
- Consider **tough alternatives to criminal sanctions** for those who are found to have engaged in voter fraud. FDLE's experience demonstrates that often "criminal intent" is often difficult to establish, even though questionable vote conduct occurs. Give the Attorney General or another entity the authority to seek civil sanctions and civil fines when criminal sanctions will not be sought.
- **Expand candidate disqualification sanctions.** Florida does not provide a blanket disqualification from holding office for those convicted of voter or election misconduct. For example, while a convicted felon may not vote, Florida law disqualifies a person from holding office upon felony conviction of F.S. 104.071 (remuneration by candidate for services, support, etc.) and F.S. 104.271 (making false or malicious charges against, or about an opposing candidate.) Not every election related conviction will disqualify one from office-holding. The list of offenses that, once committed,

disqualifies a person from holding office should be expanded to cover any voter fraud activity.

- **Enhance registration and absentee ballot process audit efforts.** Recognize that such efforts require a level of highly-specialized expertise to ferret out voter fraud around the state before it occurs and rises to a criminal level. Local jurisdictions may not have the resources to support such an effort, so consideration should be given to providing the effort at the state level.
- **Publish and distribute to each registered voter a "Voter Fraud Prevention Handbook"** similar to that used in California, including a voter fraud hotline toll free number to report suspected abuses, and, if implemented, to provide information that could be used to fund one's reward when a fraud perpetrator is convicted.
- **Consider requiring notification of the death of an individual to the Supervisor of Elections as a requisite prior to the settling of one's estate in court either by reason of a will or without.** Proof of notification would be necessary in order to close out the estate's matter in court. Require the Supervisors of election to report any received notices of death to the central database within a short period of time, and to remove the person from all active voting rolls.

*This list is not exhaustive, but is offered as the "starting point" for potential legislative consideration and review. None of the suggestions should be deemed "FDLE proposals." They are offered as the basis to promote discussion rather than as finalized proposals.*

*Florida Department of Law Enforcement*

*January 5, 1998*

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Footnotes:

1. Chapter 97-13 did address two areas of voter fraud. Section 31 of the law raised the penalty under F.S. 104.011 (False swearing; submission of false voter registration information) from a First Degree Misdemeanor to a Third Degree Felony. Section 32 created a First Degree Misdemeanor offense at F.S. 104.012(4), "Altering Voter Registration Application Without Person's Knowledge and Consent." [Back to Text](#)

2. "Voter Fraud Prevention Handbook" page 1. By the Office of California Secretary of State Bill Jones. [Back to Text](#)

3. A copy of the book may be accessed at [www.ss.ca.gov](http://www.ss.ca.gov) or by writing California's Secretary of State at 1500 11th Street, Sacramento CA 95814. [Back to Text](#)

029048





029049

**COMPLAINT**  
For Alleged Voter Fraud in  
**Voter Registration or Voting**  
(Section 106.22(11), Florida Statutes)

*Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250  
Telephone 1-877-868-3737 (1-877-VOTERFRAUD)*

The Division of Elections has authority to conduct preliminary investigations into any irregularities or fraud involving voter registration or voting and report its findings to the State Attorney for the judicial circuit in which the alleged violation occurred for prosecution, where warranted.

**PERSON BRINGING COMPLAINT**

Name \_\_\_\_\_ Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_  
Address \_\_\_\_\_ County \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**PERSON AGAINST WHOM COMPLAINT IS BROUGHT (limit one person per form)**

Name \_\_\_\_\_ Work Phone \_\_\_\_\_  
Address \_\_\_\_\_ County \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Title of office or position held or sought \_\_\_\_\_

Have you filed this complaint with the:

State Attorney's Office	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Florida Department of Law Enforcement	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Florida Elections Commission	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Florida Commission on Ethics	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**VIOLATION**

If you believe any irregularities or fraud involving voter registration or voting has been committed, please state the specific acts committed by the person named in this complaint:

\_\_\_\_\_

\_\_\_\_\_

**STATEMENT OF FACTS**

State in your own words the detailed facts and circumstances that form the basis of your complaint, including the names of any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person against whom this complaint is brought while knowing his or her actions were wrongful.

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029050

**STATEMENT OF FACTS (continued)**

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Check here if additional pages or documents are attached.

\_\_\_\_\_  
Signature of complainant

\_\_\_\_\_  
Print or type name of complainant

This complaint is not confidential and, once on file with the Division of Elections, it will be treated as a public record.

## **FOCUS OF CURRENT RESEARCH**

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

## **PURPOSE OF WORKING GROUP**

Given the preliminary research and EAC authority under  
HAVA ----

## **WHERE DOES EAC GO FROM HERE?**

**NOT** to debate what other agencies or organizations should  
or should not be doing.

## Development of:

- nationwide statistics and methods of identifying, deterring, and investigating [redacted] in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating [redacted] [section 241(b)(7)].

## The Federal Crime of Election Fraud

-- Prepared by  
Craig C. Donsanto<sup>1</sup>

The material that follows addresses the role of the United States Department of Justice in criminal matters that arise out of the balloting process, i.e. election fraud.

This paper seeks to answer the most frequently asked questions concerning the federal law enforcement role in election matters. Particularly, what sort of election-related conduct is potentially actionable as a federal crime, what specific statutory theories apply to "frauds" occurring in elections lacking federal candidates on the ballot, what federalism, procedural, and policy considerations impact on the federalization of this type of case, and how Assistant United States Attorneys (AUSAs) should respond to this type of complaint.

An effective federal role in prosecuting crimes against the electoral process is critical to the proper functioning of American democracy. The integrity of the voting process stands at the very heart of our system of representative government. Where elections are corrupted, arbitrary and corrupt government inevitably follow. Rooting out corruption in the election process, and bringing those responsible for it to swift and sure justice, is an important national law enforcement priority.

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<sup>1</sup> Director, Election Crimes Branch, Public Integrity Section, Criminal Division, United States Department of Justice.

The views expressed in this paper are solely those of its author, and do not necessarily reflect the policy of the United States Department of Justice on the issues addressed. This paper creates no procedural or substantive rights for private parties, and cannot be relied upon by those whose circumstance may fall within the discussion herein.

029055

\* **What sort of activities are prosecutable as federal "voter fraud" crimes?**

The federal concept of "voter fraud" applies only to activity that is appropriately remedied through criminal prosecution, as distinguished from other less severe remedies such as election contest litigation or administrative relief.

In assessing the appropriateness of the criminal remedy to a given set of facts, federal prosecutors should keep in mind that our society tolerates behavior in election campaigns that it does not tolerate in commercial, personal, or government relations. Thus as a general rule, the federal crime of "voter fraud" embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results.

This definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutive theory. Examples of the latter would include such things as stealing an opponent's campaign property, breaking into an opponent's headquarters, some transactions that are illegal under campaign financing laws. On the other hand, most things that candidates do or say about one another on the campaign trail, are generally not appropriated remedied through criminal prosecution.

This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. If such isolated acts of "fraud" are to be subjected to criminal penalties, that is a task for the states not the federal government to do. Indeed, there is a still-unresolved constitutional issue that dates back to the 19th century concerning whether



the federal courts have authority to hear criminal cases involving isolated incidents of electoral fraud. See e.g., Blitz v. United States, 153 U.S. 308 (1894).

Finally, this definition excludes mistakes and other gaffs which inevitably occur in the administration of the usually hectic election day polling process. Mistakes happen. They can have significant impact on the outcome of close elections. Where mistakes occur on a significant enough level to potentially affect the outcome of an election, the appropriate remedy is an election contest brought by the loser seeking civil judicial redress through the appropriate state election contest process. But mistakes in election administration are not appropriately remedied through criminal prosecution.

In addition to the qualitative limitations on the concept of "criminal" election fraud set out above, the task of prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity. See U.S. Constit. Art I, Secs. 2 and 4. Consequently, there are only a limited number of federal statutes and prosecutive theories available to address "voter frauds," and an overall imperative for federal authorities to give way to state and local enforcement in most -- but not all -- situations involving voting. With these considerations in mind, there are essentially four types of federal "election fraud:"

– **First**, there are schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be ineligible to vote under applicable state law.

– **Second**, there are schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all. This includes such activities as schemes by poll

managers to stuff ballot boxes, schemes to impersonate nonvoting individuals either at the polls or via absent voter ballot, and schemes by vote canvassers to alter vote tallies.

– **Third**, there are schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent. These include such things as schemes to "assist" voters in such a manner that the voter does not knowingly consent to electoral preferences that are placed on the ballot, schemes to pay voters for voting, schemes to intimidate voters through physical or economic means, schemes to cast multiple ballots, and schemes to induce voters to validate ballot documents (usually absentee ballots) by misrepresenting what the document is.

– Finally, there are schemes to knowingly prevent voters qualified voters from voting. These include such activities as destroying voter registrations or ballots, preventing people known to be qualified to vote from doing so, schemes to tamper with computer equipment that most United States election discripts use to tabulate votes, and physically disrupting order within open polling locations.

**\* When is it appropriate for federal prosecutors to intervene in election "fraud" matters?**

The Constitution gives primary responsibility for conducting elections and safeguarding the voting process to the states, not to the federal government. The federal role in matters involving the conduct of elections is a limited one. See e.g., ACORN v. Edgar, 56 F.3d 791 (7th Cir. 1995); Voting Rights Coalition v. Wilson, 60 F.3d 1411 (9th Cir. 1995). Thus, as a general rule the task of policing the integrity of the election process -- including the prosecution of people who violate local or state election laws carrying criminal penalties -- lies with local and state authorities, to which federal power normally should yield.

There are four principal situations where deferral to state or local enforcement authorities may not be appropriate. If any of these factors is present in a pattern of conduct, it may be appropriate to prosecute it federally -- to the extent that this is possible under available federal laws. These four situations are:

1. Federal affect. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office (e.g., Anderson v. United States, 411 U.S. 211 (1974)).

2. Civil rights. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statues such as the Voting Rights Act, 42 U.S.C. § 1973 et seq.

3. Prosecutor of last resort. Where federalization is required in order to redress longstanding patters of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law.

4. Link to other crimes. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other from of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense.

\* **What are the advantages of prosecuting election frauds in federal courts?**

There are four procedural advantages to prosecuting election frauds in federal courts.

These are:

- Voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on.

- Voter fraud matters are always politically sensitive and very high profile endeavors at the local level. Local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason.

- The successful prosecution of voter fraud cases demands that critical witnesses (including voters whose voting acts have been co-opted) be examined under oath before criminal charges based on their testimony are filed. Many states lack the broad grand jury process which exists in the federal system.

- The defendants in voter fraud cases are apt to be politicians -- or agents of politicians -- and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

\* **What federal statutes are available to federalize frauds that occur in all elections – Federal as well as Non-Federal?**

The fact that the United States Constitution leaves election administration primarily with the states severely diminishes the number and scope of federal laws on this subject where there are no federal candidates on the ballot. Most elections in the United States are nonfederal in the sense that no candidates for federal office are on the ballot. Moreover, as a general rule election fraud is a far more common feature of local elections than it is of federal ones since local politics usually affects people's daily lives more directly than does national politics.

Federal criminal laws dealing directly with elections are generally confined to prohibiting fraudulent activities that occur in "mixed" elections, where federal candidates (i.e., Senate, Congress or President), are on the ballot. National elections such as these occur only two or three times in a two-year election cycle. Thus, a major challenge to the development of an effective federal law enforcement initiative against electoral fraud has been to adapt federal criminal statutes aimed at activities other than voting to the most common varieties of election frauds identified above.

The federal criminal prosecutive theories currently in use to federalize election frauds in all elections include the following:

- Schemes by polling officers "acting under color of law" to violate their duty under state law to safeguard the integrity of the election process through purposefully allowing void ballots to be cast ("stuffed") in the ballot box, or by intentionally rendering fraudulent vote tallies, can be prosecuted as civil rights violations under 18 U.S.C. 241/242 per U.S. v. Olinger, 759 F.2d 1293 (7th Cir. 1985) and its progeny. These two statutes prohibit, among many other things, intentional denigration by public officers acting under color of law of the "one-person-one-vote" principle of Equal Protection that is guaranteed in the 5th and 14th Amendments of the Constitution. Schemes to manipulate voting equipment and to stuff ballot boxes normally require physical access to voting equipment that can only be achieved through authority conferred by state law, thus satisfying the "state action" jurisdictional peg in these two statute in ballot manipulation schemes. Due to a quirk in the law, this theory is not available for use when the object of the scheme is to obtain and record illegal votes obtained through vote buying -- even where an election officer is used to ensure that bought voters vote right. The cases that

require this result are United States v. Bathgate, 246 U.S. 220 (1918); United states v. McLean, 808 F.2d 1044 (4th Cir. 1988).

- Schemes to stimulate or reward voter registration by offering or giving voters things having monetary value violate the "payment for registering" clause of 42 U.S.C. § 1973i(c). Currently all State voter registration laws are make voter registration "unitary" in nature, in the sense that a registrant becomes simultaneously entitled to vote for all candidates -- federal and nonfederal alike. In these situations, the "unitary" nature of the registration act provides a sufficient federal nexus to permit federal regulation, and it thus does not matter what particular election the subjects were interested in affecting or when the payments were made. See United States v. Cianciulli, 482 F.Supp. 585 (E.D. Pa. 1979).

- Schemes to register voters fraudulently through providing election officials materially false information about the voter's eligibility for the franchise can be prosecuted in some situations without regard to when the underlying activity took place. As with payments for registering, this is because of the "unitary" nature of the registration act. However, the specific federal statutes that apply to fraudulent registration schemes do impose some limits on the prosecution of this type of case in nonfederal election years:

- The "false registration information" clause of 42 U.S.C. § 1973i(c) reaches only schemes to provide false information concerning a voter's "name, address or period of residence in the voting district." Schemes to provide other categories of false information (e.g., citizenship) are not reached by this statute, regardless of how material that information may be to determining voter eligibility.

– The recently-enacted National Voter Registration Act (NVRA) contains a new criminal provision that reaches schemes to provide any materially significant piece of information concerning entitlement to the federal franchise under state law. 42 U.S.C. § 1973gg-10(2)(B). This new criminal law is broader than Section 1973i(c) in terms of the categories of false information to which it applies. It took effect on January 1, 1995.

– Schemes to obtain and cast ballots that are materially defective (and thus "void" under local law) in non-federal elections can be prosecuted under the Federal Mail Fraud Statute, 18 U.S.C. § 1341, when the United States Mails (a Federal instrumentality) are used to further the scheme. The "fraud" in this situation lies in generating ballots that the defendants can be shown to have known were materially deficient under state election law, and in causing a false vote count by concealing those material defects from the vote tabulating authority. Federal jurisdiction rests on the fact that the mails are a federal instrumentality.

- The Travel Act, 18 U.S.C. § 1951, is a federal statute that makes it a felony to travel across state lines or to mail items intrastate in aid of activity that constitutes "bribery" under the law of one or more of the states involved in the interstate travel. Schemes to pay voters can be prosecuted under this statute in those states where paying voters is treated as a "bribery" offense. At the current time (1996), 30 of the 50 states treat vote buying as a "bribery" offense, and in those states this activity can thus be prosecuted under Section 1951. Most vote buying schemes do not involve inter-state travel. However, they do often rely on the absentee voting process, and thereby use the United States Mails. Thus the availability of the Travel Act allows for the federalization of vote buying schemes using the absentee balloting process.

\* **What additional statutes are available to federalize election fraud when federal candidates are on the ballot?**

In addition to the statutes and prosecutive theories given above, there are several specific criminal laws in the United States Code that address electoral frauds which take place when a federal candidate is on the ballot.

- 42 U.S.C. § 1973i(c) prohibits specific types of voter frauds, when they occur in connection with an election where there are federal candidates on the ballot. The most prominent of these are schemes to provide election officers with false information concerning voters' names, addresses, or one's period of residence in the election district in order to qualify to vote; and schemes to pay voters. The payment for voting portion of this statute requires only that the payment be intended to influence the voter to participate in the election. It does not require that the voter be paid to vote for federal candidates, or for any specific candidate. United States v. Bowman, 636 F.2d 1003 (5th/11 Cir. 1981); Dansereau v. Ulmer, (Ak. S.Ct. 1995). The statute does not, however, criminalize payments that are intended merely to make it easier for a voter to get to the polls, United States v. Lewin, 467 F.2d 1132 (7th Cir. 1972). Nor does it prohibit payments made for actions short of voting -- such as endorsing candidates.

- 18 U.S.C. § 597 prohibits making expenditures for the specific purpose of stimulating voters to cast ballots for candidates seeking the federal offices of Senator, Congressman or President. This is an old statute that does require a specific intent to affect a specific election.

- 42 U.S.C. 1973i(e) prohibits "voting more than once" in elections where federal candidates are on the ballot.



- 42 U.S.C. § 1973gg-10(2) prohibits furnishing any significantly false information to an election officer for the purpose of voting in a federal election. Whether a statement is significantly false is determined by whether its importance to voter eligibility under the law of the state in which the vote was tendered. This is a new statute that was added by the National Voter Registration Act of 1993, and it took effect in most states on January 1, 1995.

- 18 U.S.C. 594 prohibits intimidating voters for the specific purpose of inducing them to cast ballots for one or more federal officers (i.e. Senators, Congressman, Presidents).

- 42 U.S.C. § 1973gg-10(1) prohibits voter intimidation in any election where federal candidates are on the ballot regardless of the objective of the defendant to influence specific election contests. This is another facet of the new statute criminal law enacted through the NVRA. With respect to both this statute and Section 594, "intimidation" means actual duress caused by physical or economic threats.

- Finally, 18 U.S.C. § 608 prohibits all the above forms of election fraud when they occur in connection with votes cast by Americans living abroad under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, which in the principle means by which American citizens living abroad vote by absentee ballot.

\* **How should federal prosecutors evaluate election fraud complaints?**

Information concerning election irregularities comes from a wide variety of sources of varying degrees credibility and in varying degrees of factual specificity. The evaluation of such complaints usually requires prosecutors to address four questions:

- First, does the substance of the complaint -- assuming it can be proven through investigation -- suggest a potential crime? The sort of activity that is usually treated as "criminal" under federal law is summarized above.

- Second, is the complaint sufficiently fact-specific that it provides leads for investigators to pursue? In order to support a criminal investigation, a complaint must be reliable, as well as sufficiently fact-specific to provide logical leads by which a federal preliminary investigation can confirm -- or disprove -- that a federal crime may have occurred along the lines of the offenses discussed above. As most of these offenses deal with frauds that are aimed at defects in individual registration or voting acts, the incoming facts in a complaint should normally specific registration or voting acts that the complainant believes to have been corrupted, or provide leads to the detection of such specific corrupted voting acts. If the facts contained in the complaint fail to meet this standard, the complainant is normally told that (s)he has not sufficient information to allow evaluation and is encouraged to obtain and provide the additional factual detail needed for preliminary evaluation.

- Third, is there a federal statute that can be used to federalize the criminal activity at issue?

- Finally, is a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement? The four most commonly asserted bases for federalization of election "fraud" crimes are also discussed above.

\* **What investigative procedures should be avoided in election fraud matters?**

Investigation of election irregularities by federal authorities always present unique issues of federalism insofar as this principle concerns the constitutionally based primacy of state

responsibility over election administration. Such investigations also have the potential to "chill" lawful voting activity and to interfere with the state vote certification process. All federal election fraud investigations must avoid the following procedural pitfalls:

- Non-interference in elections. Overt federal investigation of election fraud matters should be held to a bare minimum necessary to preserve evidence and elicit the evaluative facts until the election in which the alleged "fraud" occurred has been certified. Once a federal criminal investigation is conducted openly in a matter concerning an as-yet unresolved election, the investigation will inevitably become a central feature in the election's outcome. Yet the issue of "who won" is an issue for state -- not a federal prosecutor - to perform. Absent allegations of civil rights abuse actionable under the Voting Rights Act, it is not a proper function of federal criminal justice to interfere with the conduct of elections, the tabulation of votes, the resolution of election contest litigation, or the certification of winners. In most instances, this process is concluded within a few weeks of an election.

Thus, in election matters lacking Voting Rights Act overtones, and except where as is absolutely necessary to preserve evidence or to round out a seemingly valid complaint to a point where an analysis can be performed on it, no overt federal investigation should be conducted in election fraud matters before the outcome of the election at issue has been certified by appropriate state authorities. The only exception to this rule is where a very limited pre-election inquiry is determined to be absolutely necessary in order to preserve evidence or to round out a seemingly valid complaint to a point where an federalization evaluation can be performed.

- Interviewing voters during active voting periods. Most voting fraud investigations require that individual voters at some point be questioned concerning the

circumstances under which they voted (or did not vote). Such interviews should generally not be conducted immediately prior to an election or while voting is taking place. This is because having federal agents interview citizens about the circumstances under which they voted (or did not vote) can easily "chill" lawful voting activity by the interviewees, as well as voters similarly situated. This is not an appropriate result. Thus, the Public Integrity Section should be consulted before any investigative action is taken that anticipates interviews of individual voters during a period of active voting in their respective jurisdiction.

- Seizing official election documentation. The investigation and proof of election "fraud" matters customarily rely heavily upon the usually voluminous documentation that the election process produces. Usually, this documentation -- or at least a part of it -- must at some point be obtained by federal authorities perusing criminal election fraud matters. In federal election years, a federal statute enacted in 1960 requires that this important documentation be retained intact for at least 22 months following the election. However, in nonfederal election years, the retention of this documentation is governed solely by state laws which in most states allow its destruction following 30 to 90 days after the election. This means that in nonfederal elections, there is a time-sensitivity to securing federal possession of important election records once a decision has been made to federalize a given inquiry. However, seizing or subpoenaing official election records into federal custody may deprive state authorities of materials they may require to tabulate, canvass and certify the results of elections. No action should be taken that deprives the state of records it needs to perform this state activity, and Public Integrity should be consulted before any attempt to secure such records is made.

- Investigative activity inside open polls. As noted previously in this paper, the task of conducting elections and determining their outcomes is a uniquely state function. Most states closely regulate who may be inside polling places while they are open and during the time when ballots are being tabulated and election results canvassed. In most states,<sup>2</sup> these "poll access" provisions do not anticipate that federal law enforcement personnel be admitted to such places at such times.<sup>3</sup>

In addition, 18 U.S.C. § 592 prohibits the stationing of "armed men" at places where voting activity is taking place. The FBI has determined that this statute applies to Special Agents, who are authorized to carry arms. Anyone who directs an "armed force" to enter a polling location can be subject under this old post Civil War statute to felony penalties.

In view of the above, no federal investigative activity should be done inside open polling places, or in locations where votes are being processed, tabulated or canvasses, without prior consultation with the Public Integrity Section of Justice Department Headquarters.

Along similar lines, there is no authority for federal criminal law enforcement personnel to serve as poll watchers in elections. This is probably the most frequently asked question concerning the federal role in election matters. The only exception lies in Illinois (where state law is uniquely broad), and in matters of racial and language minority voting discrimination falling under the Voting Rights Act.

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<sup>2</sup> Illinois is a notable exception.

<sup>3</sup> These state poll access laws are superseded by the federal Voting Rights Act in matters involving discrimination in the franchise based on racial or language minority status. However, absent evidence of an intent to discriminate based on these federal statutory factors, the administration of the election process is a function of local and state law to which we in the federal law enforcement community should defer.

## CONCLUSION

Allow me to conclude this paper with an editorial of March 19, 2004, in the Big Sandy News of Eastern Kentucky concerning a recent election fraud prosecution in a rural jurisdiction in the Appalachian Mountains of Eastern Kentucky. The editorial comments on the sentencing of Donnie Newsome, the County Judge-Executive of Knott County, for vote buying. This editorial appears here with the permission of the Big Sandy News, whose late Publisher and Editor, Scott Perry, as an Eastern Kentucky newspaper man, led a strong charge against public corruption and took a proactive role in the fight.

In Kentucky, county judge-executives are the chief operating officers of county government, and, as such, occupy a position of substantial power. Judge Newsome's conviction culminated a series of vote buying cases the Public Integrity Section and the United States Attorney's Office for the Eastern District of Kentucky jointly prosecuted during 2003 and early 2004 arising out of a scheme to pay voters for voting in the 1998 primary. This series of cases ultimately resulted in the indictment of 16 defendants. Twelve of these defendants were convicted, three were acquitted, and one had his case dismissed.

The highlight of this series of election fraud cases was the conviction of Knott County Judge-Executive Donnie Newsome for for vote buying in violation of 42 U.S.C. § 1973i(c). Thereafter, the defendant cooperated with the prosecution and received a sentence reduction recommendation under U.S.S.G. §5K1.1. On March 16, 2004, he was sentenced to serve 26 months in prison.<sup>4</sup>

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<sup>4</sup> The sentencing judge indicated that had it not been for the downward departure recommended by the prosecution, he was prepared to sentence Newsome to five years' imprisonment.

The following editorial, reprinted here in its entirety, presents an eloquent and concise statement of why the investigation and prosecution of electoral corruption are important law enforcement priorities of the Justice Department.

*Vote fraud sentencing sad, encouraging*  
- - by Susan Allen

*Tuesday's sentencing in federal court of Knott County Judge-Executive Donnie Newsome and campaign worker Willard Smith on vote buying charges was both a sad and encouraging day for Eastern Kentucky.*

*Sad the people of Knott County were effectively robbed of their voting rights by Newsome and others dolling out cash to buy a public office.*

*Sad that, as Federal Judge Danny C. Reeves pointed out, some people in Knott and other counties think that elections are supposed to be bought and the only reason to go to the polls is to get their pay off.*

*Sad those seeking public office in Knott County, and most assuredly in other counties, target poor, handicapped, addicted and uneducated voters to carry out their scheme to secure public office and a hefty paycheck.*

*Sad that voters in Knott and other counties have been reduced by years and years of political corruption to truly believing that selling their vote is not wrong, it's the norm.*

*Sad that Eastern Kentuckians have pretty much been left to the mercy of the political machines which serve as dictators of their lives, from their home towns all the way to Frankfort.*

*Sad that generations sacrificed their lives and their children's lives to the political bosses for mere bones from their local leaders while now their kids are dying from drug overdoses which, we strongly suspect, are directly tied to the years of iniquity and demoralization.*

*Sad that even today some elected officials continue the abuse and either refuse or can't comprehend the impact of their past and current atrocities against their own people.*

*Sad that Judge Reeves could see and completely understand during just a one week trial the utter hopelessness and apathy in the area people feel regarding the so-called democratic process.*

*Sad that our state lawmakers have piddled away their time during this legislative session on petty political issues without even proposing laws that would bar convicted felons, especially vote buyers from retaining their offices while appealing their verdicts.*

*Sad that Donnie Newsome continues to rule Knott County from a jail cell.*

*Tuesday's events were encouraging in that prosecutors (AUSA E.D. Ky.) Tom Self and (Public Integrity Section Trial Attorney) Richard Pilger were willing to fight the hard battle for the people of Knott County, which hopefully will lead to at least a grassroots effort for people to take back their towns.*

*Encouraging that some light has been shed on the workings of the dark political underworld which might shock the good people of Eastern Kentucky into action, at least for their children's future.*

*Encouraging that what might be perceived as a baby step with Newsome's conviction could finally lead to that giant step Eastern Kentuckians must surely be ready to take to recapture control of their own destinies.*

*Encouraging that federal authorities have pledged to continue the fight they have started to restore to the people the right to govern themselves without dealing with a stacked deck.*

*Encouraging that Judge Reeves and prosecutors did see that the Knott Countians who sold their votes, in some cases for food, were victims of Newsome's plot and didn't need to be punished further.*

*Encouraging that there's some branch of government, in this case on the federal level, not shy about taking on political power houses, knowing the obstacles in their way will be many.*

*Encouraging that Newsome's lips have loosened regarding others involved in similar schemes to buy public office, even though we suspect it has nothing to do with righting the wrongs, only a self-serving move to spend less days behind bars.*

*Encouraging that maybe, for once, we are not in this fight alone and have a place to turn to for help when we are willing to stand up to the machine.*

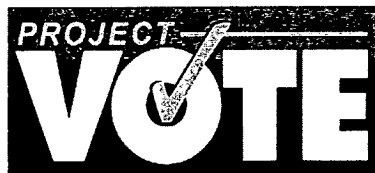
*The feds have helped us take that first step toward getting back what is rightfully ours which has been traded away by others in the past in back room deals. Not only do they need our help, they need our help.*

*This time, let's not let ourselves down.*



# THE POLITICS OF VOTER FRAUD

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# KEY FINDINGS

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- ***Voter fraud is the “intentional corruption of the electoral process by the voter.”*** This definition covers knowingly and willingly giving false information to establish voter eligibility, and knowingly and willingly voting illegally or participating in a conspiracy to encourage illegal voting by others. All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers fall under the wider definition of ***election*** fraud.
- ***Voter fraud is extremely rare.*** At the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.
- ***The lack of evidence of voter fraud is not because of a failure to codify it.*** It is not as if the states have failed to detail the ways voters could corrupt elections. There are hundreds of examples drawn from state election codes and constitutions that illustrate the precision with which the states have criminalized voter and election fraud. If we use the same standards for judging voter fraud crime rates as we do for other crimes, we must conclude that the lack of evidence of arrests, indictments or convictions for any of the practices defined as voter fraud means very little fraud is being committed.
- ***Most voter fraud allegations turn out to be something other than fraud.*** A review of news stories over a recent two year period found that reports of voter fraud were most often limited to local races and individual acts and fell into three categories: unsubstantiated or false claims by the loser of a close race, mischief and administrative or voter error.
- ***The more complex are the rules regulating voter registration and voting, the more likely voter mistakes, clerical errors, and the like will be wrongly identified as “fraud.”*** Voters play a limited role in the electoral process. Where they interact with the process they confront an array of rules that can trip them up. In addition, one consequence of expanding voting opportunities, i.e. permissive absentee voting systems, is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.
- ***There is a long history in America of elites using voter fraud allegations to restrict and shape the electorate.*** In the late nineteenth century when newly freed black Americans were swept into electoral politics, and where blacks were the majority of the electorate, it was the Democrats who were threatened by a loss of power, and it was the Democratic party that erected new rules said to be necessary to respond to alleged fraud by black voters. Today, the success of voter registration drives among minorities and low income people in recent years threatens to expand the base of the Democratic party and tip the balance of power away from the Republicans. Consequently, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

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- ***The historically disenfranchised are often the target of voter fraud allegations.*** Fraud allegations today typically point the finger at those belonging to the same categories of voters accused of fraud in the past – the marginalized and formerly disenfranchised, urban dwellers, immigrants, blacks, and lower status voters. These populations are mostly found among those still struggling for full inclusion in American life.
- ***Better data collection and election administration will improve the public discussion of voter fraud and lead to more appropriate policies.*** We need better data, better election administration, transparency and more responsible journalism to improve public understanding of the legitimate ways in which electoral outcomes can be distorted and manipulated. This will help ensure that new laws and rules to prevent fraud are narrowly targeted to solve legitimate problems rather than used as a strategy to shape the electorate for partisan advantage.

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# INTRODUCTION

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The claim that voter fraud threatens the integrity of American elections is itself a fraud. It is being used to persuade the public that deceitful and criminal voters are manipulating the electoral system. No available evidence suggests that voters are intentionally corrupting the electoral process, let alone in numbers that dilute and cancel out "the lawful votes of the vast majority of Americans."<sup>1</sup> The lack of evidence is not due to a failure to codify voter fraud as a crime, nor is it due to the inability or unwillingness of local law enforcement agencies to investigate or prosecute potential cases of voter fraud. In fact, when we probe most allegations of voter fraud we find errors, incompetence and partisanship. The exaggerated fear of voter fraud has a long history of scuttling efforts to make voting easier and more inclusive, especially for marginalized groups in American society. With renewed partisan vigor fantasies of fraud are being spun again to undo some of the progress America has made lowering barriers to the vote.

The purpose of this report is to disentangle the myth from the reality and to separate the politics of voter fraud from legitimate administrative concerns about the integrity of the electoral process. To make the argument, we present a usable definition of voter fraud, discuss the problem of evidence, and explain how and why the dynamics of electoral competition drive the use of baseless fraud claims in American politics. We present several contemporary examples to illustrate how poor election administration and voter mistakes are misleadingly labeled "fraud." Recent allegations against voter registration campaigns highlight the need for an analysis sensitive to the partisanship and race and class issues just beneath the surface of most voter fraud claims. The last section of the report makes policy recommendations for improving public understanding and removing the canard of voter fraud from the election reform debate. The appendix discusses what to look for in evaluating voter fraud allegations.

<sup>1</sup> U.S. Senate Republican Policy Committee, "Putting An End to Voter Fraud," (February 15, 2005); available online at [http://rpc.senate.gov/\\_files/Feb1504VoterFraudSD.pdf](http://rpc.senate.gov/_files/Feb1504VoterFraudSD.pdf).

# DEFINING VOTER FRAUD

Conceptual clarity is important in evaluating evidence of fraud. We begin with a discussion of what voter fraud is and what it is not. The first problem in defining voter fraud is that as a crime, it defies precise legal meaning. In fact, there is no single accepted legal definition of voter fraud. We have fifty different state electoral systems and fifty state criminal codes governing the administration of elections, plus a federal code that applies in national elections, and no uniform standards. In fact, some states do not actually criminalize 'voter fraud,' although they all criminalize acts that are commonly lumped together under the term, such as illegal voting, providing false information to register to vote, and multiple voting.<sup>2</sup> The legal incoherence contributes to popular misunderstandings.

We need a basic definition of voter fraud that cuts through the confusion without violating the way voter fraud is diversely treated in state and federal law. We can start with the U.S. Department of Justice's definition of *election fraud* and apply it to election crimes committed by *voters*. The Justice Department defines election fraud as "conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered."<sup>3</sup> Voter fraud is a sub-category of election fraud, or the intentional corruption of the electoral process by voters.

*Voter fraud is the intentional corruption of the electoral process by voters.*

This covers *knowingly and willingly* giving false information to establish voter eligibility, and *knowingly and willingly* voting illegally or participating in a conspiracy to encourage illegal voting by others.<sup>4</sup> Apparent acts of fraud that result from voter mistakes or isolated individual wrongdoing or mischief making not aimed at corrupting the voting process should not be considered fraud, though sometimes these acts are prosecuted as such.<sup>5</sup> All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers fall under the wider definition of *election fraud*.<sup>6</sup>

<sup>2</sup> There are many examples of states that criminalize what we think of as voter fraud without calling it voter fraud. Georgia, for example, has no election code offense for "voter fraud," but it does provide stiff penalties for "repeat voting" and "voting by unqualified elector." See, for example O.C.G.A. § 21-2-560 et seq. In New Hampshire, the crime of voting more than once is called "wrongful voting." See, N.H.R.S. § 63-659.34. In Alaska, voter impersonation, voting more than once, and registering to vote without being entitled to register are all simply called "voter misconduct." See, Ala. Statutes § 15.56.040 et seq.

<sup>3</sup> Craig C. Donsanto and Nancy Stewart, *Federal Prosecution of Election Offenses*, 6<sup>th</sup> Edition, U.S. Department of Justice, Criminal Division, Public Integrity Section (January 1995), 21 (herein cited as 'DOJ Manual').

<sup>4</sup> Fraud is commonly defined as "deception *deliberately* practiced with a view to gaining an unlawful or unfair advantage" (*emphasis added*). See *Webster's Revised Unabridged Dictionary*, Version published 1913 by the C. & G. Merriam Co. (Springfield, Mass.), under the direction of Noah Porter, D.D., LL.D. Criminal intent is a feature of the election crime codes of most states and the federal system, although a showing of intent is not always required to obtain a conviction for some forms of voter fraud such as "alien voting" (voting by a non-citizen).

<sup>5</sup> The proper venue for challenging mistakes that may have affected the outcome of an election is to follow state statutory procedures for an election challenge or contest. See, Barry H. Weinberg, *The Resolution of Election Disputes: Legal Principles That Control Election Challenges* (Washington, D.C.: IFES, 2006).

<sup>6</sup> This definition of voter fraud is simpler and more coherent than others offered. See, for example, U.S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study* (December 2006), 13-16, available online

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Allegations of "voter fraud" should be analyzed to determine 1) who is alleged to have committed the fraud, and 2) which stage of the electoral process is alleged to have been corrupted. This approach will go a long way toward clarifying whether electoral integrity is being breached and what needs to be done to secure the process (see the appendix for further discussion of how to identify fraud).

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at [www.eac.gov/docs/Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.pdf](http://www.eac.gov/docs/Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.pdf) (herein cited as 'EAC Report'). Moreover, although it is simple, it preserves the meaning of "fraud" in the electoral context as outlined by the Justice Department. The Department's manual for training U.S. Attorneys in investigating and prosecuting election crimes divides "election frauds" into two categories, one that involves the participation of voters and another that does not. Those election fraud crimes involving the participation of voters include vote buying schemes, absentee ballot frauds, voter intimidation schemes, migratory-voting (or floating-voter) schemes, and voter 'assistance' frauds, in which the wishes of the voters are ignored or not sought. See, Donsanto and Stewart (1995), 22-24. Acts of voter intimidation which are included in the election fraud definitions offered in both the EAC Report and the DOJ Manual are excluded here. While the intimidation of voters certainly corrupts the electoral process, it is a crime that more directly involves the deprivation of rights guaranteed by law and for that reason should be treated separately from acts of deceit.

# VOTER FRAUD AND THE PROBLEM OF EVIDENCE

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How prevalent is voter fraud? A 2005 U.S. Senate Republican Policy Committee report claimed that “voter fraud continues to plague our nation’s federal elections, diluting and canceling out the lawful votes of the *vast majority of Americans*” (emphasis added).<sup>7</sup> This would be shocking if it were true. But the Committee made it without providing a single piece of evidence to support or clarify the claim. It cited no surveys, no statistics, no studies, no credible evidence whatsoever to back up its warning that election results are routinely distorted by fraud in the United States.

## ***Evidence of voter fraud like all other crimes comes from law enforcement efforts to combat it***

The Committee cited no data because there is very little to cite. Evidence of voter fraud like evidence of other forms of criminal behavior is primarily produced by law enforcement efforts to detect and prosecute it. And the available evidence here suggests that voters rarely commit voter fraud.<sup>8</sup> As in the case of all other kinds of crime, it is simply unacceptable to allege law breaking without providing at least some supporting evidence.

What is that evidence? At the national level, a major new project at the U.S. Department of Justice, the Ballot Access and Voting Integrity Initiative (BAVII) has resulted in only a handful of convictions.<sup>9</sup> According to the Attorney General, since the inception of the program in 2002, “we’ve made enforcement of election fraud and corruption offenses a top priority.”<sup>10</sup> The result? Government records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. This includes 19 people who were ineligible to vote, five because they were still under state supervision for felony convictions, and 14 who were not U.S. citizens; and five people who voted twice in the same election, once in Kansas and again in Missouri.<sup>11</sup>

<sup>7</sup> U.S. Senate Republican Policy Committee (2005).

<sup>8</sup> The idea that voter fraud is first and foremost a crime reaches substantially the federal concept of election fraud which “applies only to activity that is appropriately remedied through criminal prosecution, as distinguished from other less severe remedies such as election contest litigation or administrative relief.” See, Craig C. Donsanto, “The Federal Crime of Election Fraud,” prepared for the Russian election reform website, Democracy.Ru, n.d.; available online at [www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html).

<sup>9</sup> On the origins of BAVII, see Jeffrey Toobin, “Annals of Law: Poll Positions,” *The New Yorker* (September 20, 2004). Very little information about the program’s overall scope and performance has been released by the Justice Department’s Public Integrity Section; annual press releases announce the numbers of investigations and convictions obtained, and the Public Integrity Section’s annual reports to Congress briefly discuss some of the cases, but efforts to acquire more information about the program have been stymied by the Criminal Division’s failure to respond to a Freedom of Information Act request filed in July 2005. Nevertheless, it is difficult to imagine that the Department would withhold information about closed cases of deceitful voters, and therefore likely that the limited information it has released so far is all there is.

<sup>10</sup> Prepared Remarks of Attorney General Alberto R. Gonzales, Ballot Access and Voting Integrity Symposium, Washington, D.C. (October 4, 2005).

<sup>11</sup> U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d.).

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## Federal Prosecutions for Illegal Voting 2002 – 2005

CASTING A FALSE BALLOT	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
<b>False claim of eligibility</b>					
Non-citizen	4	1	3	11	19
Felon	4	1	3	2	10
<b>Multiple voting</b>	3	1	5		9
<b>TOTAL</b>	<b>11</b>	<b>3</b>	<b>11</b>	<b>13</b>	<b>38</b>

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d).

In addition, the BAVII uncovered several vote buying schemes that have resulted in the convictions or guilty pleas of about 30 people, though most of those convicted were party and election officials, candidates for public office and elected officials, and in one case, the commander of a local VFW post. The vote buying cases involved a handful of elections in the Appalachia regions of eastern Kentucky and West Virginia, East St. Louis, Illinois and Caldwell County, North Carolina.

The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.<sup>12</sup> There are no reliable, officially compiled, national or even statewide statistics on voter fraud.<sup>13</sup> Even though many criminal acts associated with "voter fraud" are classified as felonies, voter fraud fails to appear in the F.B.I.'s uniform crime reports. There are no publicly available criminal justice databases that include voter fraud as a category of crime. No states collect and publish statistics on voter fraud.<sup>14</sup>

### ***The lack of evidence is not due to a failure to codify voter fraud as a crime***

If fraud is such a persistent concern of those who run elections, government agencies responsible for election administration should collect statistics on it, as they do in other serious matters, certainly other crimes. It is not as if the states have failed to detail the ways voters could corrupt elections. There are hundreds of examples drawn from state election codes and constitutions that illustrate the precision with which the states have criminalized voter and election fraud.

If we use the same standards for judging voter fraud crime rates as we do for other crimes, which is to calculate the incidence of crime from law enforcement statistics on arrests, indictments and convictions, we must conclude that the lack of evidence of arrests, indictments or convictions for any of the practices defined as voter fraud means very little fraud is being committed relative to the millions of votes cast each year in state, local and federal elections.

<sup>12</sup> Lori Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Dēmos: A Network for Ideas and Action, 2003). The author is engaged in a more thorough analysis of state-level voter fraud data and investigations which will be published in her forthcoming book. To-date, the findings only confirm Minnite and Callahan's earlier conclusions.

<sup>13</sup> This is an urgent concern. Law professor Spencer Overton persuasively argues for a more empirical cost-benefit approach to evaluating the value and constitutionality of new restrictive photo identification voting requirements. As Overton notes, this approach is hampered by the lack of systematic data on fraud. See, Spencer Overton, "Voter Identification," *Michigan Law Review* 105(2007), 631-682.

<sup>14</sup> The California Secretary of State's Office compiled information on electoral fraud cases referred to its office from 1994 to 2003. The data were analyzed in an unpublished conference paper (see, R. Michael Alvarez and Frederick J. Boehmke, "Contemporary Election Fraud: A Quantitative Analysis of Election Fraud Cases in California," paper prepared for Election Fraud Conference, Center for Public Policy and Administration, The University of Utah, and the Caltech/MIT Voting Technology Project, Salt Lake City, Utah, September 29-30, 2006; available online at [www.vote.caltech.edu/events/2006/FraudConf/AlvBmk-paper.pdf](http://www.vote.caltech.edu/events/2006/FraudConf/AlvBmk-paper.pdf)), but they are not publicly available.

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### **Examples Of How States Criminalize "Voter Fraud"**

- In Texas, a person can be convicted of a third degree felony if he or she "votes or attempts to vote in an election in which the person knows the person is not eligible to vote; knowingly votes or attempts to vote more than once in an election; or knowingly impersonates another person and votes or attempts to vote as the impersonated person."<sup>i</sup>
- California's election code has dozens of provisions that prohibit illegal activity associated with elections. It prohibits fraudulent registration, including registering under a false name, registering under a false address, and registering a non-existent person. It makes it a felony for a person to vote in an election that he or she is not entitled to vote in, to vote more than once, or impersonate another voter. Moreover, it is a felony in California to "give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to vote or not vote for a particular candidate."<sup>ii</sup>
- Pennsylvania law gives the power to monitor elections to county boards of elections, and imposes a substantial number of penalties on people engaging in election fraud. Giving or receiving money in exchange for voting a certain way in an election can bring up to seven years in prison and \$15,000 in fines. Any person convicted of perjury "regarding any material matter or thing relating to any subject being investigated, heard, determined or acted upon by any county board of elections, or member thereof, or by any court or judge thereof, judge of election, inspector of election, or overseer" can receive up to five years in prison and a \$10,000 fine. Any person voting when they are not registered to vote, or voting more than once can be punished the same.<sup>iii</sup>
- Nineteenth century language in the Alabama Constitution disqualifies from voting "all idiots and insane persons" and those convicted of crimes like murder, arson, and rape, but also wife battering, bigamy, sodomy, miscegenation and vagrancy. It also disqualifies from voting any person convicted of "selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector."<sup>iv</sup>
- In Minnesota, it is a felony to submit more than one absentee ballot, assist another in submitting more than one absentee ballot, or alter another's absentee ballot in any way.<sup>v</sup>

<sup>i</sup> Tex. Gov't Code Ann. § 64.012.

<sup>ii</sup> Cal. Gov't Code § 18520.

<sup>iii</sup> 25 Pa. Stat. Ann. Art. XVIII, generally.

<sup>iv</sup> Constitution of Alabama (1901), Section 182.

<sup>v</sup> Minn. Stat. Ann. § 203B.03.

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## ***The lack of evidence of voter fraud is not due to law enforcement agencies ignoring their duties***

Even if crime reports underestimate true crime rates because some crimes go unreported or undetected, or because criminal behavior is sometimes addressed by means other than prosecution, crime is still measured as a function of law enforcement efforts to address it. Under the rule of law, enforcement efforts establish the core evidence of crime. It is difficult to conceive of whole categories of criminal behavior that go almost completely undetected or ignored by law enforcement officials at all levels of government across the U.S. today. And yet, those who believe there is a lot of voter fraud despite the lack of evidence frequently fall back on this argument. When confronted they charge the paucity of evidence is due to the government's failure to undertake the investigations and prosecutions that would produce it.<sup>15</sup> A more plausible explanation is that voters are not committing fraud, leaving little to investigate or prosecute.

## ***The lack of evidence of voter fraud is not due to the inability of law enforcement agencies to pursue voter fraud investigations***

Some argue that local officials are ill-equipped to detect voter fraud and poorly motivated to pursue investigations and prosecutions of voter fraud given their lack of expertise and resources and the public's demand for attention to more serious or violent crimes.<sup>16</sup> If election crime, perhaps like international securities fraud or organized crime, were beyond the ken of local officials to investigate, then we might expect a dearth of prosecutions and little evidence of voter fraud. This is another explanation offered by those who argue that there is a lot of fraud despite the lack of evidence. Local officials, the argument goes, can't or won't prosecute fraud for a variety of reasons. The detection and prosecution of voter fraud, however, is not beyond the ken of local officials. In fact, as the Justice Department manual on how to investigate and prosecute election crime argues, "there are several reasons why election crime prosecutions may present an easier means of obtaining convictions than do other forms of public corruption." They are, 1) "election crimes usually occur largely in public," 2) "election crimes often involve many players," and 3) "election crimes tend to leave a paper trail."<sup>17</sup> Without any evidence to support it, the notion that local law enforcement officials are unable or unwilling to investigate or prosecute voter fraud lacks merit. But, as the saying goes, if you repeat a rumor enough times people will start to believe it.

<sup>15</sup> Recently, a federal appeals court judge repeated the rumor that, "...the absence of [voter fraud] prosecutions [in Indiana] is explained by the endemic under enforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events)." See, *Indiana Democratic Party v. Rokita*, U.S. Court of Appeals, 7<sup>th</sup> Circuit, Case No. 06-2218, 7. This is a contentious issue, but like most allegations of voter fraud, one that fails to rise above the level of anecdote.

<sup>16</sup> For example, in affirming the lower court's decision upholding Indiana's new photo identification law, U.S. Court of Appeals Judge Richard Posner proposed the idea that as a crime, voter fraud is analogous to littering. See also Donsanto and Stewart, asserting, "...local law enforcement is often not equipped to prosecute election offenses" (1995, 8), and Donsanto's subsequent statement that, "Voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on." (Donsanto, n.d.) Here, Donsanto, the director of the Elections Crimes Branch of the Justice Department's Public Integrity Section since its inception in 1978, undermines a claim he makes earlier in a *University of Baltimore Law Review* article, that, "Most election fraud is easily recognized." If it's easily recognized, why would local law enforcement agencies lack the manpower and resources to take on investigations and prosecutions? See, Craig C. Donsanto, "Federal Jurisdiction Over Local Vote Fraud," *University of Baltimore Law Review* 13(1), 4.

<sup>17</sup> Donsanto and Stewart (1995), 6.

# “FRAUD” THAT IS NOT FRAUD

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A review of hundreds of news reports on voter fraud appearing over a recent two year period found that with few exceptions, fraud allegations and cases reported in the press were limited to local electoral contests and individual acts, and fell into three basic categories:

- 1) *unsubstantiated or false allegations of voter fraud made by the losers of close elections;*<sup>18</sup>
- 2) *mischief; and,*
- 3) *claims that later turn out to be based on cases of voter error or administrative mistakes, not fraud.*

*Here are some examples:*

## *Examples of fraud alleged by election losers*

- Pittsburgh City Council President Bob O'Connor lost a close primary race to incumbent Mayor Tom Murphy and charged voter fraud cost him the election. Pittsburgh election officials allowed the two campaigns to review balloting while monitoring each other. Mayor Murphy's campaign found 81 ineligible voters in a sampling of 71 of the city's 404 precincts. The *Pittsburgh Post-Gazette* reviewed Murphy's data and found only three clearly improper ballots. The O'Connor campaign claimed it found 142 votes cast by people whose voter registration cards were missing but would not share its data with the *Post-Gazette* for independent verification.<sup>19</sup>
- The Pasco County Canvassing Board of Port Richey, Florida, denied a request for a recount filed by Bob Leggiere who lost to the incumbent by nine votes. Leggiere claimed that voter fraud and 11 ballots that did not register a vote for mayor were the cause of his defeat. He charged that owners of a gambling boat operation voted illegally because their boat, which was their legal residence, was outside the city limits, suggesting that "because of their gambling boat interests, they have attempted to take control of the city elections." The canvassing board informed Leggiere that he needed to file a protest with the board or a complaint in court, which he declined to do.<sup>20</sup>

## *Examples of fraud as mischief*

- A Ventura County, California woman was arrested and charged with voter fraud when her ex-husband noticed the names of two of their underage children on a list of registered voters in the March 2000 primary and turned her in. The woman was charged with fraudulently registering her 10- and 15-year old daughters, one of her daughter's friends, her ex-husband who was already registered, and a number of fictitious people.<sup>21</sup>

<sup>18</sup> For a discussion of fraud and the sore loser, see Michelle L. Robinson, "Issue in the Third Circuit: Election Fraud – Winning At All Costs," *Villanova Law Review* 40 (1995), 869+.

<sup>19</sup> James O'Toole, "Voting Errors Suggest No Fraud," *Pittsburgh Post-Gazette* (June 17, 2001), B17.

<sup>20</sup> Chase Squires and Matthew Waite, "Fraud Alleged in Port Richey Vote," *St. Petersburg Times* (April 12, 2001), B4.

<sup>21</sup> "Woman Faces Vote Fraud Charges," *The San Diego Union-Tribune* (October 29, 2000), A3.

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- Prosecutors in West Palm Beach, Florida agreed not to charge a woman who registered her poodle, "Cocoa Fernandez," as a Republican on the condition that the woman stay out of trouble for a year. She averted a third-degree felony charge carrying a maximum 5-year prison term and a \$5,000 fine.<sup>22</sup>
- A story appeared in the Marquette University student paper that 174 of 1,000 students surveyed said they voted more than once in the November 2000 presidential election. Another 170 claimed to have voted for write-in candidates, but the official canvass of the voting precincts surrounding the Marquette campus recorded only 12 write-in votes for president. One student told ABC News, the *Milwaukee Journal Sentinel* and the Marquette student paper that he voted four times. He later recanted when a list of voters from his precinct did not include his name at all. The Milwaukee County District Attorney said he had no evidence of any student voting more than once. The student who told the media he voted four times was later charged with selling other students fake Ohio drivers licenses he printed using his dorm room computer.<sup>23</sup>

### **Examples of fraud as voter error**

- The *Milwaukee Journal Sentinel* conducted a two-month review of 203,000 votes cast in Milwaukee and found that 361 felons still under state supervision cast votes in 2000. This was in violation of an "often misunderstood state law" that disqualifies felons on probation or parole from voting. Ninety percent of the 361 illegal votes were cast by African Americans living in central city neighborhoods, most with convictions for welfare fraud, forgery and other property offenses. The newspaper reasoned that the illegal votes probably went to Al Gore, since 92 percent of African Americans in the state voted for Gore. They estimated that if disqualified felons elsewhere in the state voted illegally at the same rate obtained in Milwaukee, as many as 1,100 illegal votes could have been cast statewide, a significant number given Gore's margin of victory was only 5,708 votes. None of the illegal voters contacted by the paper knew they were prohibited from voting, and a review of parole and probation procedures suggested they were never informed.<sup>24</sup> Charges were filed against three people but later dropped when prosecutors couldn't prove those charged knew they were breaking the law.
- A voter inadvertently filled out five ballots in a local election in Montgomery County, Texas. "It (the five ballots, sic) was just handed to me and I just put them in the box," said the culprit, 52-year old Ruben Jones, "I wasn't paying attention." An election judge allowed one of Jones' votes to count resulting in a tie at 83 votes each between two candidates who were then forced into a run-off. Fraud was charged. The city attorney acknowledged the judge's mistake but could not overturn his decision to allow one of the votes to count. There was no provision in Texas election law for overruling an election judge on such matters.<sup>25</sup>

Examples of cases of administrative incompetence and mistakes leading to misplaced allegations of voter fraud in St. Louis and Milwaukee are discussed in detail below.

<sup>22</sup> "In Brief/Florida: No Charges, But Pooch Can't Punch Ballot," *Los Angeles Times* (December 17, 2001), A23.

<sup>23</sup> "Marquette Student Admits He Didn't Vote Four Times," *Chicago Sun-Times* (November 16, 2000), 3; "Voter Fraud Inquiries Lead to Charges Against 3 in Milwaukee," *St. Louis Post-Dispatch* (December 21, 2000), A8.

<sup>24</sup> Dave Umhoefer and Jessica McBride, "361 Felons Voted Illegally in Milwaukee; Law Is Poorly Understood, Rarely Invoked Here," *Milwaukee Journal Sentinel* (January 21, 2001), 1A.

<sup>25</sup> Harvey Rice, "Ballot Error Won't Change Deadlocked Race," *The Houston Chronicle* (May 12, 2001), 33.

# THE POLITICS OF VOTER FRAUD CLAIMS

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There are many reasons why electoral reform is difficult to achieve, chief among them the benefits the *status quo* bestows on politicians in charge of making the rules. Voting rights advocates working to expand the electorate and make voting easier for more citizens must also overcome recurring arguments that reform will encourage more voter fraud. Indeed, the specter of voter fraud has been manipulated by elites to restrict and shape the electorate for nearly two centuries.

## *The Late Nineteenth Century and the “Good Government” Defense*

The electoral reforms of the Progressive era dismantled Populist voting majorities and reflected the reformers' class and anti-immigrant biases. Following the turmoil of the election of 1896 when new immigrants, struggling farmers, and wage workers flooded into the electorate, wealthy elites pressed for tighter regulation of the electoral process. They promoted personal voter registration systems that had the effect of de-mobilizing the poor and working classes.<sup>26</sup> The reformers' rhetoric fastened on fraud and the need to eliminate it in order to protect 'the Democracy.' The perception of fraud and widespread electoral corruption gave their efforts moral ballast which obscured the class conflict at the center of the struggle for the vote.

*The specter of voter fraud has  
been manipulated by elites to  
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For Progressive era elites, voter registration was good government and universal voting was directly associated with corruption and voter fraud.<sup>27</sup>

Municipal reformers drawn from the ranks of the new middle and upper class professional strata assumed the lower classes possessed inferior moral capacities that produced unscrupulous behavior in politics. They wrestled control of government away from the older political machine organizations by imposing administrative reforms on the electoral process. These reforms deliberately privatized and personalized the social act of voting in order to undercut the machine's capacity to mobilize majorities through ethno-religious and other group-based appeals.<sup>28</sup>

<sup>26</sup> Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000), 91-2.

<sup>27</sup> Dayna Cunningham, "Who Are To Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991), 383.

<sup>28</sup> After the Civil War, the electorate was demobilized in different ways in the North and South. Black disenfranchisement was pursued through the use of violence and terror, and institutionalized through the re-writing of Southern state constitutions between 1890 and 1910. Mississippi pioneered the "Southern system" of burdensome residency requirements, periodic registration, poll taxes, literacy and "understanding" requirements, and exacting disqualification provisions, all designed to strip black men of the vote without reliance on overt racial classifications (Cunningham (1991), 377). There is a large scholarly literature on this subject. See, for example, classic works by V.O. Key, *Southern Politics in State and Nation* (New York: A.A. Knopf, 1949); and J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974). On efforts to reshape the electorate outside of the South during this period, see, Walter Dean Burnham, "The Appearance and Disappearance of the American Voter," in Walter Dean Burnham, *The Current Crisis in American Politics* (New York: Oxford University Press, 1983); and Paul Kleppner, *Who Voted? The Dynamics of Electoral Turnout, 1870-1980* (New York: Praeger, 1982). For a fascinating account of how nineteenth century voters behaved at the polls on Election Day, see Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (New York: Cambridge University Press, 2004).

Much has been written about the colorful and varied forms of political corruption in the nineteenth century.<sup>29</sup> The debate over the extent of fraud among scholars, however, has failed to settle the question of whether it accounted for the extraordinarily high levels of turnout that disappeared with the adoption of personal voter registration systems.<sup>30</sup> Nor is it certain that the new voter registration laws were responsible for reducing the election fraud they were aimed at eliminating. But, election fraud documented by the reformers usually involved organized efforts by election officials and politicians, not by the voters who were the intended target of restrictive reforms like voter registration.<sup>31</sup>

Nevertheless, voting rights have been won. Most of the conditions that once gave rise to what we would characterize as fraudulent practices today, such as ballots produced and distributed by the political parties, have changed. In the nineteenth century, election fraud was sometimes perpetrated by partisans acting together to steal elections. Local party organizations competed for voters and controlled votes through patronage, and the stakes were high. In those days, parties, patronage and fraud were intertwined. Today, local party organizations are weak to nonexistent, in part because their access to patronage has all but disappeared. They no longer control lucrative franchises, run police and fire departments, set utility rates or build large-scale public works. The demise of local parties and patronage over the last century has undermined the logic and eroded the means of committing voter fraud.

*The demise of local parties and patronage over the last century has undermined the logic and eroded the means of committing voter fraud.*

### ***The Civil Rights Era and Beyond***

With each significant effort to protect and extend the right to vote, opponents have argued that the expansion of the franchise, whether through federal protections for voting rights or through reduced structural barriers to the franchise, would lead to more voter fraud. The threat of fraud was taken up by congressional opponents of the Voting

Rights Act of 1965; it was raised in the conflict over extending the Act during the first Reagan Administration; and again, in more recent debates over the National Voter Registration Act.<sup>32</sup> It is the very success of these reforms that explains why fraud claims have re-emerged as a principle form of voter intimidation. The victories of the civil rights movement make it no longer easy or acceptable to suppress voting through the use of terrorism or violence, or with a poll tax or a literacy test. Today the intimidation is more subtle.

The dynamics of electoral competition in a two-party plurality system also contribute to the resurrection of the specter of voter fraud. When elections are close, the logic of competition drives opponents to fierce conflict. The winner in a two-party system needs only one vote more than his or her opponent; 51 percent of the votes wins it all, 49 percent wins nothing. Competing parties in

<sup>29</sup> See, for example, Glenn C. Altschuler and Stuart M. Blumin, *Rude Republic: Americans and Their Politics In the Nineteenth Century* (Princeton: Princeton University Press, 2000); and Tracy Campbell, *Deliver the Vote: A History of Election Fraud, an American Political Tradition – 1724-2004* (New York: Carroll & Graf, 2005).

<sup>30</sup> See, Piven and Cloward (2000), 25-6, discussing the work of Walter Dean Burnham, Philip Converse, Paul Kleppner and Jerrold G. Rusk. See also, Howard W. Allen and Kay Warren Allen, "Vote Fraud and Data Validity," in Jerome M. Clubb, William H. Flanigan, and Nancy H. Zingale, eds., *Analyzing Electoral History: A Guide to the Study of American Voter Behavior* (Beverly Hills: Sage Publications, Inc., 1981), 153-194.

<sup>31</sup> See Cunningham (1991), 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934).

<sup>32</sup> For an important account of the movement to reform voter registration laws leading to the passage of the National Voter Registration Act of 1993, see Margaret M. Groarke, *Expanding Access to the Vote: An Analysis of Voter Registration Reform in the United States, 1970-1993* (Ph.D. diss., Department of Political Science, City University of New York, 2000).

close elections fight hard to maximize their chances of winning that 51 percent<sup>33</sup> because the closer the election, the fewer the number of voters that are needed to shift victory to one party or the other. Tight elections produce the biggest pay-off for the smallest shifts in vote share.

Theoretically, parties or campaigns can produce a shift by expanding votes for themselves or constraining votes for their opponents, or even pursuing both practices at the same time. But expanding the vote carries higher risks for incumbents. Elected officials try to preserve the majorities that elect them and are wary of the threat new voters pose. Both parties, therefore, are wary of expansion. Since the success of the Voting Rights Act prohibits them from carving out their majorities in ways that directly violate laws protecting voting rights, they shape and manage their electorates by more subtle means, through the rules that govern the electoral process. Both parties seek to control, enforce and bend electoral rules to their advantage. As the political scientist, E.E. Schattschneider once observed,

In politics as in everything else it makes a great difference whose game we play. The rules of the game determine the requirements for success. . . . and go to the heart of political strategy.<sup>34</sup>

For example, today, Republican party officials and incumbents support restrictive interpretations of the rules governing voter qualifications when they anticipate that tightening access to the vote will hurt their rivals.

They insist that the votes of legitimate, qualified voters are threatened by the votes of ineligible voters, justifying their support for restrictive identification requirements.<sup>35</sup>

The Democrats resist these efforts when they think the new rules will threaten their own party base; but if the new rules aren't likely to threaten the base, the Democrats, whose elected officials share the same interest in a stable, predictable electorate as their Republican colleagues, compromise and endorse new restrictions. The Democrats' concession to the inclusion

of an identification requirement for first time voters who register to vote by mail in the Help America Vote Act of 2002 (HAVA), in the face of widespread opposition on the part of voting rights advocates, is a case in point.<sup>36</sup> New HAVA voter identification requirements apply to a diffuse category of new voters whose party loyalties were unknown and therefore in adding this rule at the national level, neither party could claim an uncontested advantage or disadvantage. In the partisan wrangling over the bill, the important questions about the extent of voter fraud and the effectiveness of new rules in combating it were lost.

*Given the particular party and competitive dynamics of the current period, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.*

<sup>33</sup> Or a plurality when the occasional third party candidate is in the race.

<sup>34</sup> E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960), 48-49.

<sup>35</sup> U.S. Senate, Republican Policy Committee (2005).

<sup>36</sup> Emily Pierce, "Senate Standoff Over Voter Fraud Provision Threatens to Sink Election Bill," *CQ Monitor News* (February 28, 2002); Karen Foerstel with Emily Pierce, "Hopes for Quick Accord on Election Standards Bill Face Liberals' Objections," *CQ Weekly - Elections* (April 13, 2002), 957; Geoffrey Gray, "Schumer's Identity Politics: Civil Rights Advocates Fight Compromise on Election Reform," *The Village Voice* (April 3-9, 2002), 42; Gabrielle B. Ruda, "Note: Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act," *Fordham Urban Law Journal* 31 (November 2003), 235.



In a competitive electoral environment it is easier and safer for the parties to try to stabilize the base and reduce the opposition's support than it is for either to recruit new voters. Given the particular party and competitive dynamics of the current period, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

Take the American Center for Voting Rights (ACVR). This organization established a presence on the Internet in March 2005, just six days before a Republican-controlled U.S. House Administration Committee hearing on problems in the 2004 Ohio election, and was the only "voting rights" group allowed to testify. Although ACVR claims it is nonpartisan, its founders, leadership, and staff have strong ties to the Republican party.<sup>37</sup> Its report on "Voter Fraud, Intimidation and Suppression in the 2004 Presidential Election," professes to be "the most comprehensive and authoritative review of the facts surrounding allegations of vote fraud, intimidation and suppression made during the 2004 presidential election." It is little more than a compendium of poorly scrutinized newspaper articles sensationalizing election shenanigans allegedly instigated in all but two instances by Democrats.<sup>38</sup> Despite the not so veiled partisanship and absence of credentials, ACVR has achieved remarkable influence advocating for strict, government-issued photo identification requirements and promoting the idea that American elections are riddled with voter fraud. Its leader, attorney and political operative, Mark F. (Thor) Hearne, II, is a serial expert witness before Congress and other government bodies on the need for photo ID. His testimony repeatedly relies for evidence on anecdotes and misleading news reports that grossly overstate the problem of voter fraud.<sup>39</sup>

The systematic use of baseless voter fraud allegations is strategic and in this sense rational, if unethical. In the late nineteenth century when freedmen were swept into electoral politics and where blacks were the majority of the electorate, it was the Democrats who were threatened by a loss of power, and it was the Democratic party that erected new rules they claimed were necessary to respond to the alleged fraud of black voters.

Today, the success of voter registration drives among minorities and low income people in recent years threatens to expand the base of the Democratic party and tip the balance of power away from the Republicans. Therefore, it is not difficult to understand why party operatives might seek to strategically generate enough public support for new restrictions on the vote that will disproportionately hinder opposition voters.<sup>40</sup> These efforts are misleadingly labeled "the electoral integrity" movement because after two hundred years struggling for the vote and winning it from below, ordinary voters are not so easily discredited in the name of democracy. Efforts to do so must appeal to misplaced moral sensibilities like the idea that "integrity" trumps rights. In the end, baseless voter fraud claims are essentially political acts because the contested history of party, race and class in American politics makes them so.

<sup>37</sup> See bradblog.com ([www.bradblog.com/ACVR.htm](http://www.bradblog.com/ACVR.htm)) for a collection of articles on the ACVR by Brad Friedman and his colleagues.

<sup>38</sup> Dimitri Vassilaros, "Study' is Political Fraud," *Pittsburgh Tribune-Review* (August 8, 2005); available online at: [www.pittsburghlive.com/x/pittsburghtrib/s\\_360812.html](http://www.pittsburghlive.com/x/pittsburghtrib/s_360812.html).

<sup>39</sup> Hearne is listed as an "academic advisor" to the Commission on Federal Election Reform (the Carter-Baker Commission), despite his lack of academic credentials. For Hearne's testimony before government bodies, see, Testimony of Mark F. (Thor) Hearne, II, on "Voter Fraud in Ohio in the 2004 Presidential Election," U. S. House of Representatives, Committee on House Administration, March 21, 2005; "Regarding the Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity," Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution Civil Rights and Property Rights, July 10, 2006; "Assessing the Conduct of the 2006 Mid-term Elections," Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Elections Assistance Commission, December 7, 2006.

<sup>40</sup> There is strong empirical evidence suggesting restrictive photo identification requirements place a disproportionate burden on low income people and minorities. See, Brennan Center for Justice at NYU School of Law and Spencer Overton, "Response to the Report of the 2005 Commission on Federal Election Reform," 2005; available online at [www.carterbakerdissent.com](http://www.carterbakerdissent.com). Overton served as a commissioner on the 2005 Commission on Federal Election Reform.

# THE USUAL SUSPECTS

## *The Historically Disenfranchised Are Often the Alleged Perpetrators of Voter Fraud*

Fraud allegations typically point the finger at those belonging to the same categories of voters accused of fraud in the past – the marginalized and formerly disenfranchised, urban dwellers, immigrants, blacks, and lower status voters. The targeting is not overt, the language is rarely explicitly racial. Instead, fraud claims tap into older elite associations of political corruption with minorities, big city machine organizations, and the poor. Allegations of voter fraud resonate with the public because they revive a familiar culture of corruption and legends about election fraud that enliven American political history. Today, the alleged culprits are mostly found among those still struggling for full inclusion in American life. This makes them suspect. That they are more likely to identify with one party than the other makes them doubly vulnerable to fraud accusations and to the collateral damage of high stakes competitive partisan politics.

*Fraud claims tap into older elite associations of political corruption with minorities, big city machine organizations, and the poor.*

## *Why Voter Registration Drives Are Vulnerable to Fraud Claims*

Since at least the 1960s, the voter registration drive has played a central role in black politics and broader efforts to engage the electoral participation of low-income groups.<sup>41</sup> The intensity of voter registration activities has waxed and waned over the years, with a recent upsurge in third party voter registration drive activity since the disputed 2000 presidential election. By 2004, approximately 12 million registered voters (or 8.5 percent of all registered voters) had registered as a result of a voter registration drive.<sup>42</sup>

## *How Americans Were Registered To Vote in 2004 (Numbers in Thousands)<sup>43</sup>*

	Voters	Percent
Went to a town hall or county/government registration office	34,657	24.5
At a department of motor vehicles agency	27,126	19.2
By mail	17,642	12.5
Filled out form at a registration drive	11,973	8.5
Registered at polling place	9,118	6.4
Filled out a form at a school, hospital, or on campus	8,078	5.7
Through a public assistance agency	1,094	0.8
Other	8,819	6.2
Don't know	22,901	16.2
<b>TOTAL</b>	<b>141,408</b>	<b>100%</b>

Source: U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File.

<sup>41</sup> In the 1980s, white Christian conservatives and other middle class groups adopted the registration drive with considerable success, but it remains an iconic expression of black political aspiration.

<sup>42</sup> U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File [Computer file]. ICPSR04272-v1. Washington, DC: U.S. Dept. of Commerce, Bureau of the Census [producer], 2005. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2006-01-16; author's calculations.

<sup>43</sup> The table reports method of registration for all registered voters, excluding missing cases. The data are estimates with sampling and non-sampling error, and are weighted by age, sex, race, Hispanic ancestry, and state of residence to partially correct for bias due to under-coverage.

Those registering through drives were more likely to be people of color and of lower income than other registered voters.

### Method of Registration by Race and Income<sup>44</sup>

Filled Out Form at Registration Drive	
Race	
Whites only, non-Hispanic	8.9
Blacks only, non-Hispanic	15.2
Hispanic (all races)	15.5
Asian only, non-Hispanic	12.7
Others	10.1
Total Annual Family Income	
Less than \$15,000	11.6
\$15,000 or more	10.0

Source: U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File.

The number of low income drive registrants is three times the number of low income voters registering at public assistance agencies mandated by the National Voter Registration Act of 1993 (NVRA) to provide registration opportunities. Just four percent of registered voters with total annual family income below \$15,000 (approximately 470,000 people) were registered to vote through a public assistance agency. This compares to approximately 1,328,000 low income voters, or 11.6 percent of those with less than \$15,000 in annual family income, who said they were registered through a registration drive.<sup>45</sup> It is clear that despite the intent of NVRA to open registration opportunities to low income Americans, thousands of eligible citizens would be left out of the electoral process were it not for the third party groups who register and encourage them to vote.

Competitive or high interest elections like those of the last six years increase incentives to mobilize voters, including the recruitment of new voters – not only to the parties, but to all the other groups who believe they have a stake in the outcome. The use of thousands of volunteers and temporary workers in these drives contributes to the potential for mistakes and duplication in the registration process. This is one of the consequences of essentially “outsourcing” voter registration to the private sector rather than placing the burden of registration on the state as is done in many of the European democracies.<sup>46</sup> If voter registration were mandatory like paying taxes, voter registration drives would not be necessary.

<sup>44</sup> The table compares only those registered voters who could identify their method of registration. Data on income are limited to people living in families. Family income is the combined income of all family members over the previous year and includes money from jobs, net income from business, farm or rent, pensions, dividends, interest, Social Security payments and any other money income received by family members who are 15 years of age or older.

<sup>45</sup> U.S. Dept. of Commerce (2005); author’s calculations. For an analysis of the recent drop off in implementation of the agency-based requirements of the NVRA, see *Ten Years Later, A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005*, a report compiled by Demos, A Network for Ideas and Action; ACORN; and Project Vote (July 2005); available online at [http://projectvote.org/fileadmin/ProjectVote/pdfs/Tens\\_Years\\_Later\\_A\\_Promise\\_Unfulfilled.pdf](http://projectvote.org/fileadmin/ProjectVote/pdfs/Tens_Years_Later_A_Promise_Unfulfilled.pdf).

<sup>46</sup> The National Commission on Election Reform Task Force on the Federal Election System notes that, “the registration laws in force throughout the United States are among the world’s most demanding... [and are] one reason why voter turnout in the United States is near the bottom of the developed world.” National Election Commission, *Report of the Task Force on the Federal Election System*, chapter 2 “Voter Registration,” (July 2001), 3; available online at [www.tcf.org/Publications/ElectionReform/NCFER/hansen\\_chap2\\_voter.pdf](http://www.tcf.org/Publications/ElectionReform/NCFER/hansen_chap2_voter.pdf).

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With the upsurge in voter registration activity has come more media attention to the handful of cases in which organizations have been accused of submitting fraudulent registration applications to local elections officials. No amount of fraud in the registration process is acceptable, but the accusations that voter fraud "is breaking out all over"<sup>47</sup> as a result of "a coordinated effort by members of some organizations to rig the electoral system through voter registration fraud" that put "thousands of fictional voters"<sup>48</sup> on the rolls are unsupported by any credible evidence anyone has been able to bring to bear. In fact, the suspicions about a vast "left-wing" or "Liberal Democrat-sponsored" conspiracy to commit voter registration fraud border on the paranoid.<sup>49</sup>

According to available government data, between October 2002 and September 2005, the federal government prosecuted just 33 people for various misdemeanor and felony crimes related to any form of election fraud that could have involved voter registration.<sup>50</sup> All but two people indicted were prosecuted for falsifying information about *their own* eligibility to vote, including: 20 people in four states who were prosecuted for registering or voting but who were ineligible under state law because they lacked U.S. citizenship; and ten people who voted in the 2004 presidential election in Milwaukee who were prosecuted for falsely certifying that they were eligible to vote when they were still under state supervision for felony convictions.<sup>51</sup> Ten of the 33 – five of the non-citizen cases and five of the felon cases – were either acquitted of the charges against them or had their indictments dismissed.<sup>52</sup> At least 19 of the 23 people convicted were alleged to have voted illegally because they were ineligible to vote, but notably, these people registered to vote and voted using their real names, hardly acts of conspiracy or of criminals trying to get away with committing fraud. Only two people were prosecuted for crimes related to fabricated voter registration applications for other people. One pleaded guilty to making false statements to a grand jury in connection with 11 fraudulent registration forms. The other, a St. Martinsville, Louisiana city councilwoman running in a hotly contested race for re-election in 2002, pleaded guilty to conspiring to submit false address

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<sup>47</sup> Michelle Malkin, September 29, 2004 blog entry; available online at <http://michellemalkin.com/archives/000596.htm>.

<sup>48</sup> American Center for Voting Rights Legislative Fund, "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," *ACVR Legislative Fund Report* (August 2, 2005), 35; available online at [www.ac4vr.com/reports/072005/080205report.pdf](http://www.ac4vr.com/reports/072005/080205report.pdf).

<sup>49</sup> See, for example, the postings of "Dean," on [democratvotefraud.blogspot.com](http://democratvotefraud.blogspot.com) (accessed in October 2006). This blog collects dozens of news articles from the 2004 election, most of which report allegations of campaign dirty tricks and voter registration fraud, and discuss protests against new "anti-fraud" measures adopted in some states like Ohio, all perpetrated by Democrats or their supporters. Under the title, "Liberal Democrat Vote Fraud," Dean explains, "We all saw the results of the 2000 American election. This time, I'm personally going to fight back in the only way that I can, with a blog that documents as many news reports about Democrat fraud as I can."

<sup>50</sup> U.S. Department of Justice, Criminal Division, Public Integrity Section, "Election Fraud Prosecutions and Convictions; Ballot Access and Voting Integrity Initiative, October 2002 – September 2005" (n.d.); available online at <http://cha.house.gov/media/pdfs/DOJdoc.pdf>. Several of these people technically were not charged with voter registration fraud, but with making false statements to government agencies (i.e., a driver's license bureau or the INS) regarding their citizenship status or eligibility to vote. This number includes cases of illegal voting due to ineligibility, assuming they must have involved registration fraud, even if it wasn't charged.

<sup>51</sup> One of those convicted, Kimberly Prude, worked as an election inspector in Milwaukee. As of February 2006, Prude was appealing her conviction. See, *United States of America v. Kimberly E. Prude*, "Criminal Complaint," United States District Court, Eastern District of Wisconsin, Case No. 2:05-CR-00162-RTR (June 22, 2005).

<sup>52</sup> In the ten cases of alleged illegal felon voting in Milwaukee, one defendant was acquitted at trial and four had their charges dismissed. Among the dismissals evidence was presented which suggested defendants did not knowingly commit fraud.

information on two voter registration cards for people who did not live in her district. Those people voted to help the councilwoman win re-election by a slim margin.<sup>53</sup>

### Federal Prosecutions of Voter Registration Fraud 2002 – 2005

VOTER REGISTRATION	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
<b>False claim of eligibility</b>					
Non-citizen	4	1	3	13	21
Felon	4	1	3	2	10
<b>False statements to grand jury about (1) voter registration forgeries</b>			1		1
<b>Conspiracy to submit false information on (2) voter registration applications</b>			1		1
<b>TOTAL</b>	<b>8</b>	<b>2</b>	<b>8</b>	<b>15</b>	<b>33</b>

\* All but two of those charged with making false claims about their eligibility to register (two non-citizens who were convicted) were also charged with casting a false or fraudulent ballot, as reported above.

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d).

Registration drives in recent years have been more effective in registering low income voters than the agency-based requirements of the NVRA. Successful voter drives hold the potential for adding significant new numbers of voters to the rolls and threatening the balance of power between the two parties. Their effectiveness has made them a target for fraud allegations. Their own sporadic failings in the production of duplicate or improperly filled out registration cards, sloppy oversight, poor quality control, and occasional fraud have only fueled the allegations. Such problems are inevitable as long as voter registration is not mandated or universal.

<sup>53</sup> Press Release, "St. Martinsville Woman Sentenced in Federal Court for Voter Fraud Charges," U.S. Attorney's Office, Western District of Louisiana (January 18, 2006); available online at: [www.usdoj.gov/usao/law/news/wdl20060118c.html](http://www.usdoj.gov/usao/law/news/wdl20060118c.html).

# CASE STUDIES

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The following case studies are illustrative of the politics of voter fraud claims. They do not tell us anything about the incidence of voter fraud in American elections today. That question is central and addressed above. It has always been difficult to measure fraud or even specify it, and it is important to stress that until better evidence comes to light, we will not be able to compile comprehensive statistics on levels of cheating by voters. Researchers are hampered in studying voter fraud because government agencies fail to track it and are often unresponsive to information requests. We can, however, make educated guesses from the available evidence, and what studies there are suggest voters rarely commit fraud. It is only in the public interest that we learn from real cases of voter fraud so that we can better understand where our electoral systems are truly vulnerable. Spurious cases of fraud like those discussed here are equally instructive because they expose the shrewd and partisan manipulation that makes real election reform so difficult.

The case studies presented below demonstrate the ways these partisan interests, database and clerical errors and incompetent electoral administration are sometimes exploited to exaggerate the problem of voter fraud. The intent of the exaggeration is to intimidate the general public and even law makers into believing that American elections face a security threat from a rising tide of deceitful and criminal voters. Unfortunately, in numerous places election administration is in crisis, and in general, faces much larger challenges from changing technology, inadequate resources, poor staffing and training, and especially, partisan manipulation. These are real issues deserving of attention, good ideas, resources and a democratic spirit. They won't be adequately addressed as long as the voter fraud hoax confuses and distracts us from confronting them.

## *ACORN and the Mac Stuart Affair*

One important example of how the politics of fraud claims are used to manipulate the public about the threat of voter fraud is the political pillorying of ACORN for alleged wide scale registration fraud in the 2004 and 2006 election cycles.

ACORN (Association of Community Organizations for Reform Now) is the largest community-based organization of low and moderate income people in the U.S. It organizes locally and has developed ballot campaigns for a range of issues such as campaign finance reform and raising the minimum wage. Opponents of ACORN's minimum wage ballot initiative program deployed allegations of voter registration fraud, which then generated official investigations, media coverage and litigation, as a strategy to undermine ACORN's ability to qualify and pass referenda in several states.<sup>54</sup> One of these cases involved a disgruntled former employee named Mac Stuart who for a while became a cause célèbre of ACORN's enemies and the pundits who fuel the fraud paranoia. The Mac Stuart affair is instructive because it highlights how politics construct the fraud debate.

In November 2003, Mac Stuart was hired by Florida ACORN and put to work as a petition gatherer collecting signatures supporting the placement of a Florida Minimum Wage Amendment on the

<sup>54</sup> "ACORN Defeats Anti-Voter Legal Attacks; Group's Voter Registration Efforts Vindicated as Baseless Lawsuits Collapse," *Common Dreams Progressive Newswire* (December 14, 2005); Joni James, "Voter Fraud Charges Collapse," *St. Petersburg Times* (December 15, 2005).

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2004 ballot. When Stuart was fired for suspicion of his involvement in an illegal check cashing scheme a few months later, he filed a Florida whistle blower lawsuit against ACORN claiming the organization engaged in a variety of illegal practices. He was represented by partisan attorneys at Rothstein, Rosenfeldt, Adler, a Fort Lauderdale law firm, and spoke secretly with an official at the Florida Chamber of Commerce which was in the midst of opposing ACORN's efforts to raise the state's minimum wage. Stuart provided his attorneys with 179 applications, many of them for Republican registrants, he claimed had been collected and withheld by ACORN.<sup>55</sup>

In the course of petitioning for signatures, ACORN workers conducted voter registration activities to ascertain whether signatories were registered to vote. Stuart's lawsuit claimed that petitioners were paid an additional \$2.00 for each completed registration card they collected; that ACORN illegally copied the voter registration cards its workers collected and sold its lists for a profit; that ACORN committed fraud by failing to deliver registration cards for people who designated "Republican" as their party affiliation, and otherwise collected cards from ineligible individuals such as convicted felons. Stuart maintained that in July 2004, he refused to participate in these illegal activities and was fired in retaliation under the pretext that he had attempted to cash another person's check.<sup>56</sup>

His lawyers filed a second suit against ACORN on behalf of 11 people whose names were among the allegedly withheld voter registration applications Stuart had provided.<sup>57</sup> Rothstein, Rosenfeldt, Adler attorneys claimed ACORN had deprived their clients of their constitutional right to vote and committed fraud against them.

After Stuart was fired, he held a news conference and contacted television and print news reporters claiming that "[t]here was a lot of fraud committed" by ACORN, asserting the organization knowingly submitted thousands of invalid registration cards while storing away cards for people designating their party affiliation as Republican. Stuart's allegations were immediately picked up by news organizations such as the *Washington Times*, the *Florida Times-Union*, and other Florida newspapers, and began to spread on rightwing Internet blogs. The Florida Department of Law Enforcement took the unusual step of announcing an investigation into ACORN.<sup>58</sup> In fact, for a while, Stuart's assertions were taken as fact and repeatedly reported as evidence that ACORN routinely engaged in fraud to promote its "radical political agenda."<sup>59</sup> That is, until the real facts about Stuart came to light and his case collapsed in court.

### ***Fraud charges collapse but the damage continues***

ACORN denied, and Stuart failed to prove, that canvassers were paid by the card to collect voter registration applications. ACORN's copying of voter registration applications was an element of their quality control program and well within the bounds of Florida law.<sup>60</sup> Finally, ACORN denied, and Stuart failed to produce evidence, that the organization prejudiced Republican voter registration applicants or misleadingly solicited registration cards from ineligible applicants. ACORN countersued Stuart for defamation and libel. On December 6, 2005, the matter of

<sup>55</sup> Brittany Wallman and Alva James-Johnson, "Filled-In Voter Forms Surface," *South Florida Sun-Sentinel* (October 27, 2004); Jeremy Milarsky, "Ex-Worker Sues Activist Group," *South Florida Sun-Sentinel* (October 21, 2004).

<sup>56</sup> *Mac Stuart v. ACORN*, U.S. District Court, Southern District of Florida, Miami Division, Case No. 04-2276-civ (2004).

<sup>57</sup> *Charles Rousseau, et al. v. ACORN*, U.S. District Court, Southern District of Florida, Miami Division, Case No. 04-61636-civ (2004).

<sup>58</sup> News Release, "FDLE Investigates Statewide Voter Fraud," Florida Department of Law Enforcement (October 21, 2004).

<sup>59</sup> Quoting Mike Flynn, Director of Legislative Affairs for the Employment Policies Institute; see Press Release, "ACORN's Voter Fraud in Ohio is Part of Larger Pattern," Employment Policies Institute (August 11, 2006). See, also, Meghan Clyne, "ACORN and the Money Tree," *National Review Online* (October 31, 2004); and American Center for Voting Rights, "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," ACVR Legislative Fund Report (August 2, 2005), 41-44; available online at [www.ac4vr.com/reports/072005/080205report.pdf](http://www.ac4vr.com/reports/072005/080205report.pdf).

<sup>60</sup> Nothing in Florida's election code prohibits private, third-party voter registration organizations from photocopying the voter registration applications they collect before submitting them to local elections officials.

**Mac Stuart v. ACORN** was dismissed with prejudice by a federal judge, exonerating ACORN of any and all wrongdoing.<sup>61</sup> ACORN prevailed in their counterclaims and won a judgment of defamation against Stuart.

ACORN also prevailed in the second Rothstein, Rosenfeldt, Adler suit. Shortly after it was filed, nine of the 11 plaintiffs asked to be dismissed from the case. As ACORN's lawyers deposed the remaining two plaintiffs it became clear that their lawyers had not asked them if they were qualified to vote, if they had completed the applications Stuart had given the attorneys or whether the plaintiffs were in fact Republicans. One of the two was not qualified to vote, neither remembered completing the application used as the basis for the complaint and both said that, inconsistent with their applications, they were not Republicans and never would have checked off that they were. Stuart was inconsistent in his testimony in how he obtained the applications in the first place.<sup>62</sup> This case, too, was dismissed with prejudice.

The Florida Department of Law Enforcement investigation found no evidence of illegal or fraudulent activity by ACORN. A public records request by Project Vote asking all Florida counties for any documents related to voter fraud elicited just three alleged cases of illegal activity, only one of which involved temporary ACORN workers.<sup>63</sup>

The problem is that the end of this story has received considerably less media attention than the unfounded claims of organized voter fraud on the part of ACORN. Opponents of ACORN continue to spread false rumors that the organization engages in voter fraud. For example, the Employment Policies Institute (EPI) issues dozens of press releases and "reports" attacking ACORN every year. EPI is a non-profit organization that in 2004 paid over \$600,000 in "management" fees to its executive director's publicity firm which lobbies on behalf of the hotel, restaurant, alcoholic beverages and tobacco industries.<sup>64</sup> Those industries are opposed to ACORN's efforts to raise the minimum wage in Florida and elsewhere. As late as July 2006, months after ACORN was fully vindicated in court, EPI was still claiming they engaged in a "pattern and practice" of voter fraud, citing the Mac Stuart affair as more evidence of ACORN's "widespread practice of fraud."<sup>65</sup>

### ***Voter fraud allegations used to restrict voter registration programs***

With ACORN under a cloud, Florida passed a law that carried stiff penalties for organizations failing to turn in voter registration applications later than ten days after they were collected. The law's reporting requirements were so draconian the League of Women Voters ended 77 years of voter registration activity in the state because it feared it could not comply and would be bankrupted if there were problems with just 16 registration forms collected by its volunteers. A federal judge later blocked the implementation of the law as unconstitutional.<sup>66</sup>

<sup>61</sup> Joni James, "Voter Fraud Charges Collapse," *St. Petersburg Times* (December 15, 2005).

<sup>62</sup> Telephone interview with Brian Mellor, Senior Counsel, Project Vote (April 13, 2006).

<sup>63</sup> Mellor interview (2006).

<sup>64</sup> Employment Policies Institute, "2004 Form 990, Return of Organization Exempt From Income Tax," U.S. Department of the Treasury, Internal Revenue Service, Schedule A.

<sup>65</sup> A "pattern and practice" of wrongdoing evokes conspiracy and as a legal term refers to the crime of racketeering. See, Employment Policies Institute, *Rotten ACORN: America's Bad Seed* (July 2006), 18-19; available online at [www.rottenacorn.com/downloads/060728\\_badSeed.pdf](http://www.rottenacorn.com/downloads/060728_badSeed.pdf). In fact, ACORN, along with America Coming Together, the NAACP Voter Fund, and the Ohio AFL-CIO were defendants in an Ohio lawsuit that alleged the groups conspired to engage in a series of "predicate" or related acts of forgery, document tampering and drug trafficking in order to produce fraudulent voter registration cards. See, *Rubick v. America Coming Together, et al.*, State of Ohio, County of Wood, Court of Common Pleas, Case No. 04-CV650 (2004). Plaintiffs' complaint argued each fraudulent card submitted represented a predicate act. Under the federal Racketeer Influenced and Corrupt Organizations Act or RICO, a person or group can be charged with racketeering by a U.S. Attorney if they commit any two of 35 crimes (27 federal crimes and eight state crimes) within a 10-year period and the prosecutor believes those charged committed the crimes with similar purpose or results.

<sup>66</sup> *League of Women Voters of Florida v. Cobb*, U.S. District Court, Southern District of Florida, "Order Granting in Part and Denying in Part Plaintiff's Motion for Preliminary Injunction and Granting in Part and Denying in Part Defendant's Motion to



## The Perils of List Matching

A common source of fraud claims is a list matching exercise gone wrong. The ready availability of high powered computing capacity and an ever expanding range of public records databases, have created a cottage industry of software programs and list management consultants ready to match lists for hire.

When databases contain errors or compile data differently, matching them against one another can cause a high degree of what statisticians call "false positive" errors or matches that are not really matches. A prime example is the infamous felon purge list compiled by a private firm for the Florida Secretary of State's office in 2000. That list joined data on convicted felons with the voter registration rolls using rules that matched only the first four letters of the first name, 90 percent of the last name and an approximate date of birth.<sup>67</sup> The result was a highly inaccurate list of people whom the Secretary of State wanted to prevent from voting.<sup>68</sup>

## Voting in Connecticut and beyond

In October 2002, the Republican National Committee (RNC) claimed that in the course of "updating" its voter files, it discovered over 722,000 people nationwide were registered to vote in more than one state, and that at least 600 of these had voted more than once in a single election. In Connecticut, the Secretary of State was alarmed. The RNC released a report that said 7,700 registered voters in Connecticut were also on the rolls in other states and that 54 of them had voted more than once in the 2000 election. Secretary Susan Bysiewicz, a Democrat, asked the RNC for the names of the duplicate registrants and voters. "I am surprised by the numbers," she said, "it sounds like a lot. We have two million (registered) voters, so I suppose it's possible; but in four years we haven't prosecuted one instance of voter fraud."<sup>69</sup>

At first the RNC refused to release the names and criticized Bysiewicz for not finding the problem first. When they finally turned over the names of the 54 alleged double voters, Bysiewicz found their claims baseless. Her office conducted a week long investigation of every suspect voter produced by the RNC and found that 29 had never voted in Connecticut, but did vote in another state; 18 voted in Connecticut, but not in the other state named in the report; four names had different birth dates than those on the RNC list, and three were turned over to criminal investigators because out-of-state data could not be obtained for verification.<sup>70</sup>

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Dismiss," Case No. 06-21265-CIV (August 28, 2006).

<sup>67</sup> Greg Palast, "Florida's 'Disappeared Voters': Disenfranchised by the GOP," *The Nation*, (February 5, 2001); and Palast, *The Best Democracy Money Can Buy* (Sterling, Virginia: Pluto Press, 2002), 6-43.

<sup>68</sup> The U.S. Civil Rights Commission conducted an investigation into the 2000 election in Florida and concluded, "Many people appear on the [felon purge] list incorrectly." One in seven people on the felon purge list supplied to the supervisor of the Miami-Dade election office was erroneously listed and therefore put at risk of disenfranchisement. These people were disproportionately African American. See, U.S. Civil Rights Commission, *Voting Irregularities in Florida During the 2000 Presidential Election* (2001), chapter 1. See also a disclaimer for the inaccuracy of the felon purge list posted on ChoicePoint's website ("Choicepoint's Mythical Role in Elections Past and Present," posted August 7, 2006; available online at [www.choicepoint.com/news/statement\\_08072006.html](http://www.choicepoint.com/news/statement_08072006.html)). ChoicePoint is the parent company of Database Technologies (DBT), the firm hired for the period 1998 to 2000 by the Florida Division of Elections to create its voter exception list. ChoicePoint claims, "DBT Online was not required to provide a list of exact name matches. Rather, the matching logic only required a 90 percent name match, which produced "false positives" or partial matches of the data. Moreover, the Division of Elections required that DBT Online perform 'nickname matches' for first names and to 'make it go both ways.' Thus, the name Deborah Ann would also match the name Ann Deborah. At a meeting in early 1999, the supervisors of elections expressed a preference for exact matches on the list as opposed to a 'fairly broad and encompassing' collection of names. DBT Online advised the Division of Elections that it could produce a list with exact matches. Despite this, the Division of Elections nevertheless opted to cast a wide net for the exclusion lists."

<sup>69</sup> "Thousands Registered to Vote in Two or More States," *The Associated Press State and Local Wire* (October 9, 2002).

<sup>70</sup> Press release, "Voter Fraud Claims by Republican Party Unfounded," Office of the Secretary of State Susan Bysiewicz (October 22, 2002); see also, "Bysiewicz: Double Voting Report Wrong," *The Associated Press State and Local Wire* (October 22, 2002).

### ***Double dipping in New Jersey***

A few years later, in time for the next federal election cycle, the New Jersey state Republican party (RSC) claimed it had researched voter registration files in a number of states and found evidence of multiple voting. In September 2005, the state party sent a stern letter to New Jersey Attorney General Peter Harvey threatening a lawsuit for failing to enforce state election laws governing the voter registration rolls.<sup>71</sup>

The basis for the RSC claims was their own “exhaustive investigation” of voter files from New Jersey’s 21 counties, matched internally county to county on first name, last name and date of birth, as well as against the voter registration files of five other states, New York, Pennsylvania, Florida, North Carolina and South Carolina. In addition, the RSC matched the New Jersey county files against lists of deceased persons from state and federal databases and other commercially available lists. Based on their analysis, the RSC said it found evidence of widespread multiple voting in the November 2004 general election – 4,397 people alleged to have voted more than once in New Jersey, and 6,572 people who “appear to have” voted in New Jersey and another state. Moreover, the RSC claimed that 4,755 dead people had voted and warned the problem could be even worse since the state’s rolls contained tens of thousands of duplicate records and the names of some well known felons in the state.

There is little doubt that New Jersey’s county voter registration lists contained registration records for people who moved away or died. The existence of so-called “deadwood” on voter registration records across the country is well-known. But the presence of deadwood is not in and of itself evidence of voter fraud.

A subsequent more thorough analysis of the data files the RSC supplied to the state suggests major problems with the accuracy of the RSC analysis and therefore the veracity of their claims. The Brennan Center for Justice working with Dr. Michael McDonald, an elections expert at George Mason University, concluded that “these lists simply do not prove what they purport to prove.”<sup>72</sup> Their report uncovered methodological errors in the RSC’s list matching techniques, such as omitting middle initials and suffixes like “Jr.,” which resulted in the listing of duplicate records for the same person then counted by the RSC as voting twice (from the same address). Mismatches of different people were presumed to be the same person, and again counted as voting twice. Statistical and database experts know that relying solely on non-unique identifiers such as name and date of birth to match records produces a high rate of false positives.<sup>73</sup> The Brennan Center/McDonald detailed analysis of the alleged 4,397 double votes recorded in the New Jersey county voter files accounted for them all as the likely product of false positives, errors in the data, duplicate records for the same person, and the statistical likelihood that two people will share the same name and birth date.

### ***Voting from the grave in Detroit***

Yet one more example of the damage flawed list matching efforts can inflict comes from an oft-cited news item appearing in the *Detroit News* in February 2006. The article, written by Lisa M. Collins, was headlined, “In Mich. Even Dead Vote,” and continued, “From Holland to Detroit,

<sup>71</sup> Letter from Mark D. Sheridan to Hon. Peter C. Harvey, dated September 15, 2005. Copy in author’s possession. Election administration is decentralized to the county level in New Jersey, with the Attorney General serving as the state’s chief elections officer.

<sup>72</sup> The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald, “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” December 2005, 11; available online at [www.brennancenter.org/dynamic/subpages/download\\_file\\_35010.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_35010.pdf).

<sup>73</sup> Ted Selker and Alexandre Buer, “Voter Removal From Registration List Based on Name Matching Is Unreliable,” Voting Technology Project – MIT Media Laboratory, October 28, 2004; available online at <http://72.14.209.104/search?q=cache:diE40vkjeLoJ:www.vote.caltech.edu/reports/purging-vrdb.pdf+&hl=en&gl=us&ct=clnk&cd=1>.

votes were cast by 132 dead people; Detroit's voting records are riddled with inaccuracies, casting doubt on elections' integrity."<sup>74</sup> The allegations of voting from the grave in Detroit, a poor and majority black city, are repeatedly cited by conservative bloggers in their litany of purported evidence that voter fraud is rampant in America.

But a full reading of the article itself indicates that the News did not attribute these irregularities to voter fraud. Instead, they suggested the irregularities were more likely due to clerical errors.<sup>75</sup> Influential Republican political operative, Mark F. (Thor) Hearne, paid counsel to the Bush-Cheney 2004 re-election campaign and a member of the U.S. Elections Assistance Committee's Voter Fraud – Voter Intimidation Working Group, as well as Missouri's HAVA Advisory Commission, nevertheless repeated the misleading allegations of dead people voting in Detroit when he testified before a U.S. Senate panel in July 2006.<sup>76</sup> Versions of his testimony have appeared as a feature article in the magazine of the Bar Association of Metropolitan St. Louis,<sup>77</sup> and again as testimony given to the U.S. Elections Assistance Commission in December 2006.<sup>78</sup>

This time the list matching was not performed by an elected official and presidential campaign co-chair, as it was in Florida, or a political party, as it was in the Connecticut and New Jersey examples. It was done by a newspaper which presented no assurances that it had the kind of expertise in computer programming, statistics, or records management required to make an accurate evaluation.<sup>79</sup>

On March 5, 2006, the News printed a letter from Kelly Chesney, the Communications Director for the Michigan's Republican Secretary of State, which challenged the implication that dead people were voting in Michigan. Chesney reported that an analysis of the 132 alleged deceased voters found that this was the number of absentee ballots mailed out to voters who subsequently died in the weeks before Election Day. Of the 132 absentee ballots, she said "97 were never returned, and 27 were voted and returned prior to the voters' deaths."<sup>80</sup> This substantial correction to the implications of voter fraud in Michigan has been roundly ignored by activists who continue to cite what is now an out-dated news item reporting erroneous information.

<sup>74</sup> Lisa M. Collins, "In Mich. Even Dead Vote," *The Detroit News* (February 6, 2006).

<sup>75</sup> "Clerical errors [in the Michigan voter file are] so pervasive that it is difficult to determine in many instances who actually voted;" and citing Mark Grebner, the list vendor and political consultant upon whose research the News relied, "...Grebner says he's never found evidence of organized fraud in Detroit." See, Collins (2006).

<sup>76</sup> Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights, "Regarding the Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity," July 10, 2006.

<sup>77</sup> Mark F. (Thor) Hearne, II, "The Missouri Voter's Protection Act: Real Election Reform for All Missouri Voters," *St. Louis Lawyer*, June, 2006; available online at [www.bamsl.org/members/stlawyer/archive/06/june06.html#feature](http://www.bamsl.org/members/stlawyer/archive/06/june06.html#feature).

<sup>78</sup> Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Elections Assistance Commission, "Assessing the Conduct of the 2006 Mid-term Elections," December 7, 2006.

<sup>79</sup> In fact, the News admitted in the article that they "did not review every vote cast, but instead targeted voter records based on several factors, such as the voter's birth year or voting history. Though limited and somewhat random searches were done, each search found voting records in error or highlighted names of voters who in fact could not have voted." This is hardly an adequate methodology.

<sup>80</sup> Editorial and Opinions, Special Letter, "Claims That the 'Dead' Voted Were Wrong," *Detroit News* (March 5, 2006).

## ***St. Louis: More Bad Lists, Even Worse Election Administration***

St. Louis, another majority black city with budget problems, presents a case study for how the mishandling of voter registration and elections procedures can be misperceived as fraud.

### ***Whose mess on Election Day 2000?***

There is little doubt that in the past St. Louis experienced election fraud and public corruption. St. Louis politics were long organized by political machines and fraud has a storied past which for some, at least, condemns the politics of the present.<sup>81</sup> In 2000, the historical memory of fraudulent elections, bribery, conspiracies, ballot tampering, and voting from the grave colored the rush to judgment when administrative mismanagement and shockingly poor record-keeping combined to produce troubling election irregularities.<sup>82</sup> Before the irregularities could be sorted out, they were seized upon by partisans. One of them, Missouri's senior Republican senator, Kit Bond, claimed the problems were evidence of a [Democratic party-driven] "major criminal enterprise designed to defraud voters," instead of what an extensive federal probe later determined to them to be – procedural incompetence and official failure to abide by the law.<sup>83</sup>

For many voters attempting to cast ballots in the 2000 presidential election, Election Day in St. Louis was a chaotic mess. Many long-time voters were told that they were not registered to vote when they showed up at polling sites where they had cast ballots in the past. To re-establish their legitimacy, many of these rejected voters were told to go down to the St. Louis Election Board's headquarters at 300 North Tucker Boulevard and cast a ballot there since the phone lines to the Board were jammed and election judges staffing the polling sites were unable to establish whether such voters' names had been moved to an "inactive" list of registered voters.<sup>84</sup>

### ***The illegal "Inactive" list***

It was this controversial inactive list and the failure of the St. Louis Elections Board to comply with the NVRA that later formed the basis for a federal lawsuit alleging the Board "denied or significantly impaired the voting rights" of thousands of city voters before the election.<sup>85</sup>

Missouri law requires bi-partisan control of election administration. Local boards of election have equal representation of Democrats and Republicans as do positions staffed by the boards. The St. Louis Board has had problems maintaining accurate voter registration rolls, and leading up to the 2000 election, there were still no clear rules for specifying when a voter should be dropped from the rolls.<sup>86</sup>

<sup>81</sup> Secretary of State Matt Blunt, *Mandate For Reform: Election Turmoil in St. Louis, November 7, 2000* (July 24, 2001); available online at (herein cited as 'Blunt Report'), 39-46.

<sup>82</sup> For an excellent example of the rush to judgement, see chapter four, 'Politically Active after Death,' in John Fund's *Stealing Elections: How Voter Fraud Threatens Our Democracy* (San Francisco: Encounter Books, 2004).

<sup>83</sup> For a tale of Depression-era ballot tampering linked to public corruption and waterfront development schemes in St. Louis, see chapter 7 "The Real Foundations of the Gateway Arch," in Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition, 1742-2004* (New York: Carroll & Graf Publishers, 2005). See also, Bruce Rushton, "Dead Man Voting," *Riverfront Times* (April 24, 2002). For Sen. Bond's remarks, see Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch* (November 10, 2000), A1. According to the *Riverfront Times*, "In his letters to...two federal agencies, Bond wrote...of a 'deliberate scheme' planned in advance so unregistered voters could vote illegally: 'There is reason to believe that collusion existed to commit voter fraud and voter fraud occurred on a wide scale throughout the city of St. Louis.'" See, Safir Ahmed, "Slimin' the City: When It Comes to Election Day Problems in St. Louis, the Politicians' Rhetoric Doesn't Match the Reality," *Riverfront Times* (November 15, 2000).

<sup>84</sup> *U.S. v. Board of Election Commissioners for the City of St. Louis*, U.S. District Court, Eastern District of Missouri, "Stipulation of Facts and Consent Order," Civil Action No. 4:026V001235 CEJ (August 14, 2002), 5; (herein cited as 'St. Louis Election Board Consent Order').

<sup>85</sup> Karen Branch-Brioso and Doug Moore, "Board Denied Voters' Rights, U.S. Says: Election Officials Here Say They've Already Taken Steps to Correct Deficiencies From 2000," *St. Louis Post-Dispatch* (May 23, 2002), C1.

<sup>86</sup> Office of the State Auditor of Missouri, Board of Election Commissioners, City of St. Louis, Missouri, Report No. 2004-40 (May

Between 1994 and 2000, the Board conducted a series of mail canvasses of its voter registration rolls, none of which complied with the requirements of the NVRA.<sup>87</sup> Based on these improper canvasses, the Board removed more than 50,000 names of voters who had been on the rolls in 1996, and “made no effort to notify inactive voters that their registration status had changed, that their names would not appear on the voter registration lists provided to election judges in each voting precinct, or that they would face additional administrative steps on election day before they would be permitted to vote.”<sup>88</sup> This number represented roughly 40 percent of the total number of votes cast in St. Louis in the 1996 election, and was about twice the national and state averages for the proportion of inactive voters on the rolls.<sup>89</sup> Moreover, for all elections it conducted after 1994, the Board failed to provide precinct election judges a list of any of the voters it had designated as “inactive.” This failure created mass confusion at polling sites when many legitimate voters showed up to vote and were told they were no longer registered.<sup>90</sup>

In the days leading to the November 7, 2000, election, the unprecedented administrative reclassification of thousands of active voter registration records in the overwhelmingly Democratic city was seen by Democrats, including national party officials with the Gore-Lieberman campaign, as an illegitimate Republican party-sponsored effort to restrict Democratic voting. When he spoke at a Gore-Lieberman campaign event, Democratic Congressional hopeful William Lacy Clay, Jr., told supporters not to “let anyone turn you away from the polls,” and warned, “If it requires leaving the polls open a little longer, we’re going to get a court order to do it.”<sup>91</sup>

### **The showdown**

In fact, this is exactly what happened. Voters stood in line for hours. First, they had to check in with precinct workers, then, for those whose names were no longer on the precinct voter registration lists, they stood in another line to plead their case before their precinct’s election judge.<sup>92</sup> When many of these officials were unable to confirm their registration status with headquarters because they couldn’t get through to elections officials at the Board, they sent voters down to the Board’s office to try to resolve the problems on their own. According to news reports, “It made for a wild hour at Board’s downtown office,

where hundreds of voters turned away from the polls because they were not registered or had problems voting filled the lobby throughout the day. By early evening, the lobby was shoulder to shoulder with people who wanted to vote.”<sup>93</sup>

In the afternoon, the Democrats and the Gore-Lieberman campaign filed suit in a state circuit court requesting the polls remain open for an additional three hours to accommodate voters victimized by the inaccessible and inaccurate inactive list.

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26, 2004), 10; (herein cited as ‘Mo. State Auditor’s Report’).

<sup>87</sup> Section 8(d)(2) of 42 U.S.C. 1973gg-6(d). See, St. Louis Election Board Consent Order, 3.

<sup>88</sup> St. Louis Election Board Consent Order, 4.

<sup>89</sup> In 1996, 122,003 votes were cast in the general election in the City of St. Louis. In 2002, according to records from the Federal Election Commission, both nationwide and for the state of Missouri, 12 percent of all voters on the rolls were classified as “inactive,” compared to 22 percent in the City of St. Louis. See, Mo. State Auditor’s Report, 15.

<sup>90</sup> St. Louis Election Board Consent Order, 4.

<sup>91</sup> David Scott, “Ashcroft, Talent Decide Against Pursuing St. Louis Voter Fraud Claims,” *Associated Press* (November 8, 2000).

<sup>92</sup> The State Auditor found that the St. Louis Election Board frequently failed to secure the minimum number of precinct-level election judges as required by state law. Section 115.081, RSMo 2000, mandates four election judges, two from each major political party, for each polling place at each primary and general election, or about 1,600 election judges per major election. The Auditor found that the Board has not been able to attract more than 1,200 such judges in recent elections. See, Mo. State Auditor’s Report, 24.

<sup>93</sup> Scott (2000); see also, Ahmed (2000).

St. Louis Circuit Judge Evelyn Baker complied, but her order was overturned within 45 minutes of the regular poll closing time (7 PM) by a three-judge appeals panel. The St. Louis City Board of Elections successfully argued she lacked jurisdiction to change state law. Elections officials estimated that only about 100 extra people had been permitted to vote by Judge Baker's order. Republican officials charged there may have been a "preconceived plan" to misuse the judicial process to keep the polls open longer than their statutorily mandated closing time, as well as an "organized campaign" (by the Democrats) to abuse the procedure by which voters obtain court orders to vote, resulting in voter fraud and the casting of hundreds of illegal votes.<sup>94</sup>

In a 51-page report, Republican Secretary of State Matt Blunt outlined the possible violations of law committed in the City of St. Louis by alleged illegal voters. He referred to an unspecified conspiracy "to create bedlam so that election fraud could be perpetrated,"<sup>95</sup> and to corrupt election judges put in place to manipulate the results of the election. The report claimed that, 1) 342 persons obtained court orders to vote even though the information provided by them on affidavits suggested they were properly disqualified from voting; 2) 62 convicted federal felons and 52 Missouri felons voted in either the City of St. Louis or St. Louis County; 3) 14 votes were cast in the names of dead people; 4) that there was a high probability of multiple voting by dozens of people; 5) 79 votes were cast by people registering to vote from vacant lots; and 6) 45 election judges were not registered to vote and therefore disqualified to serve.

Many of Blunt's allegations have been disproved or significantly weakened by the discovery of major records management problems at the Elections Board that resulted in grossly inaccurate voter rolls. The *St. Louis Post-Dispatch* conducted a canvass of over 2,000 alleged vacant lot addresses from which thousands of St. Louis voters were supposedly registered and found buildings on virtually all of them. The lots had been misclassified by the city assessor or misread by elections officials. They concluded that "most of the 79 people on the state's suspect voter list from last fall probably shouldn't be on it," including the city's budget director whose ten-year old condominium was mislabeled as a vacant lot.<sup>96</sup>

The claim that more than 100 felons may have illegally voted is also unreliable since the data upon which it was based was inconclusive, as the report itself admits.<sup>97</sup> Later investigations by the State Auditor did find that three years after the 2000 election fiasco, St. Louis's voter rolls still included the names of over 2,000 felons prohibited by state law from voting or registering to vote. But the Auditor found no conspiracy to commit voter fraud on the part of voters and questioned instead why the Elections Board had failed to remove the names from their lists when they had been provided with monthly and quarterly felony conviction reports from state and federal authorities.

Like the Blunt Commission, the State Auditor also found thousands of duplicate records of voters registered to vote in St. Louis and elsewhere in the state, but only 28 instances across three recent election cycles in which a voter may have voted more than once. Without further investigation it is impossible to know whether these 28 cases represent actual illegal behavior or are more likely the product of clerical errors in the Board's voter registration files.

Throughout the months following the election, Republicans and Democrats alike called for a federal investigation, each side charging the other with fraud or with suppressing the vote. Both sides expected to be vindicated. The federal investigation provided a decisive end to the Blunt Commission's allegation that corrupt election judges allowed hundreds of patently unqualified voters to vote.

<sup>94</sup> Blunt Report, 21-35.

<sup>95</sup> Blunt Report, 36.

<sup>96</sup> Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear To Be In Error; Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch* (November 5, 2001): A1.

<sup>97</sup> Blunt Report, 24, note 63.

### ***St. Louis Board of Elections forced into federal consent decree***

After an F.B.I. investigation that involved subpoenaing *all* of the registration and voting records from the St. Louis Elections Board for the months before the election, the Justice Department made a surprise announcement. They told the Board they were planning to sue them for violating the NVRA and threatening the voting rights of thousands of eligible voters in St. Louis by erroneously purging their records from the active voter file. The Board was forced into a consent decree that stipulated how they would change their procedures for maintaining accurate registration records, complying with federal requirements for notifying voters of their status on the list, and with handling voters whose names are not on the active voter list on election day.

Four years after the St. Louis Elections Board signed the consent decree acknowledging these failures, Mark (Thor) Hearne, the St. Louis lawyer and influential Republican activist, submitted

***Four years after the St. Louis Elections Board signed the consent decree acknowledging these failures, Mark (Thor) Hearne, the St. Louis lawyer and influential Republican activist, submitted Senate testimony that included citations to materials he produced after 2002 that ignored the Board's culpability and repeated misleading allegations of voter fraud in St. Louis.***

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<sup>98</sup> Hearne (June 2006), (July 10, 2006), and (December 2006).

## *Milwaukee: The Coup de Grâce*

In 2000, Vice President Al Gore won Wisconsin by just under 6,000 votes out of more than 2.5 million cast. Heading into the last months of the 2004 presidential campaign candidates George W. Bush and John Kerry were neck-and-neck in the polls in Wisconsin and the race was once again projected to be razor close. As a battleground state Wisconsin attracted attention from the national campaigns and a host of non-profit and political consulting organizations that poured money, staff and volunteers into the state to increase voter registration before Election Day.

By September, the voter registration drives and heightened national interest in Wisconsin as a battleground state led elections director Kevin Kennedy to report that elections officials across the state had been swamped by an unprecedented increase of over 200,000 new applications submitted by mail.<sup>99</sup> The intensified focus on Wisconsin by outside voter registration groups pouring their volunteers into the state was unparalleled in recent elections, an anomaly associated with Wisconsin's swing state status and the closeness of the presidential contest – in Wisconsin and the nation – just four years before.<sup>100</sup>

Pre-election news coverage in Wisconsin focused on three controversies: problems associated with some of the voter registration drives; a dispute between county and city officials over the number of ballots to be printed and provided to the city of Milwaukee; and a flap over thousands of alleged “bad addresses” on Milwaukee's voter registration list.

Procedural breakdowns and discrepancies in the voter registration records were associated with what Kennedy called “volume” problems, but they helped create a climate of suspicion about the quality of record keeping at the Milwaukee elections commission and the commission's ability to run a “clean” election.<sup>101</sup> The pre-election disputes repeatedly invoked the language of “voter fraud,” though no evidence was produced that voters were intentionally committing it. The climate of distrust made it difficult to see clerical mistakes, illegible handwriting, and workload problems leading to backlogged voter registration applications as human error or problems related to resource issues. Instead, foul-ups and mistakes were assumed to be evidence of fraud perpetrated by partisans trying to “steal elections.”

*Imperfect voter registration drives and simple human error, however, are not the same as voter fraud, nor do they inevitably lead to fraudulent voting.*

### ***Voter registration problems***

Intensified political competition and the influx of outside organizations, campaign workers and volunteers into Wisconsin in the months and weeks before the election contributed to an inevitably flawed voter registration process. Duplicate registration cards, improperly filled out cards, cards from people who are not eligible to vote or who don't live in the district in which the card was submitted are not uncommon in the chaotic pre-election atmosphere of an intense political campaign. Imperfect voter registration drives and simple human error, however, are not the same as voter fraud, nor do they inevitably lead to fraudulent voting. As the Milwaukee case demonstrates, however, these deficiencies are easily exploited by partisans.

<sup>99</sup> Tom Kertscher, “Deputy Registrar May Have Violated State Election Law; He Says He Didn't Witness Forms He Signed,” *Milwaukee Journal-Sentinel* (October 1, 2004), B1.

<sup>100</sup> Jenny Price, “Voter Registration Efforts Ramped Up In Wisconsin,” *Associated Press State & Local Wire* (October 10, 2004). Since voters can register to vote on Election Day, pre-election voter registration drives have been less common in Wisconsin than elsewhere.

<sup>101</sup> Price (2004).



## **How many ballots for Milwaukee?**

As stories of potential voter registration fraud circulated in the press, a political fight erupted in Milwaukee. In October the chief elections official in Milwaukee asked the county elections board for 260,000 extra ballots in anticipation of record turnout. Under Wisconsin law counties print and pay for all ballots for their localities. Milwaukee county elections officials rejected the request, with County Executive Scott Walker writing in support of the county board's decision to give Milwaukee roughly the same number of ballots it had received in the previous presidential election. In 2000, the number of ballots on hand exceeded the eligible voting population in Milwaukee by at least 200,000. But in planning for the number of ballots needed, local officials must compensate for the fact that in order to scan and count the ballots after they are cast, a bar code is assigned that prevents ballots from being counted outside the ward in which they are issued. In other words, unused ballots can't be moved around from ward to ward to cover shortfalls. Estimating probable turnout involves estimating turnout in each ward rather than citywide. This could have the effect of inflating the overall estimated number of ballots needed citywide. In 2004 Milwaukee requested 938,000 ballots for a voting population of about 424,000. The county board agreed to give the city 679,000 ballots, and a firestorm of protest erupted when County Executive Walker defended the decision by suggesting that he was concerned about potential voter fraud and didn't want people to be able to "grab" extra ballots at the polling site.<sup>102</sup>

Milwaukee Mayor Tom Barrett accused Walker of trying to foment chaos at the polls and suppress the central city vote. Barrett is a Democrat and served as a state co-chair of John Kerry's campaign, while Walker is a Republican and served as state co-chair of George W. Bush's campaign. In press reports, the dispute was repeatedly referred to as "ugly," generating partisan recrimination on both sides. On the morning of October 14, about a hundred protesters, including students, elected officials and union activists, stormed Walker's office while he was meeting with municipal election clerks, chanting, "Let the people have their voice!" and demanding that Walker issue the extra ballots to Milwaukee. Wisconsin Governor Jim Doyle intervened by asking the state elections board to help resolve the dispute and offered state aid to pay for the extra ballots. The next day Walker and Barrett held a joint press conference on the steps of Milwaukee city hall to announce a compromise between the city and county: the county would supply the extra ballots, giving the city the 938,000 ballots it originally requested, the city would split the cost, estimated at about \$40,000, and promise to return all unused ballots to the county election commission to ensure that all ballots were accounted for.<sup>103</sup> Approximately 665,000 unused ballots were later returned to the county board of elections.<sup>104</sup>

## **Inaccurate lists of "potentially fraudulent voters"**

At 4:57 p.m. on Wednesday, October 27, 2004, three minutes before the legal deadline for filing a complaint with the city elections commission, the state Republican Party challenged the validity of 5,619 names on the city voter rolls. State GOP chairman Rick Graber said, "This is a black eye on the city of Milwaukee and the state of Wisconsin. These 5,600 addresses could be used to allow fraudulent voting. Whether it's deliberate or not, something's wrong when you have people

<sup>102</sup> Dave Umhoefer and Greg J. Borowski, "City, County Spar Over Ballot Supply; Walker Cites Fraud Concerns; Barrett Cries Foul," *Milwaukee Journal-Sentinel* (October 13, 2004), A1; Greg J. Borowski and Dave Umhoefer, "Walker-Barrett Ballot Dispute Heats Up More; County, City Accuse the Other of Trying to Make Election Day Controversy," *Milwaukee Journal-Sentinel* (October 14, 2004), B1.

<sup>103</sup> Associated Press, "Governor Sends Election Board Into Milwaukee Ballot Fray," *Capital Times* (October 15, 2004), 4A; Dave Umhoefer and Steve Schultze, "Doyle Joins Rift Over Ballot Supply; Governor Seeks State Inquiry; After Protest, Walker Agrees to Review City's Request," *Milwaukee Journal-Sentinel* (October 15, 2004), A1.

<sup>104</sup> Greg J. Borowski, "665,000 Unused Ballots Returned; Review Finds City's Original Allotment Would Have Been Sufficient," *Milwaukee Journal-Sentinel* (November 25, 2004), B1.

from addresses that don't exist."<sup>105</sup> First the local elections board voted 3-0 when the board's lone Republican appointee joined the two Democrats in finding the challenge lacked sufficient evidence. The Milwaukee City Attorney, Grant Langley, conducted a review that he said in a letter to the city elections commission executive director casts "doubt on the overall accuracy" of the list supplied by the state GOP.<sup>106</sup>

Then, just four days before Election Day the state GOP demanded that Milwaukee city officials require identification from 37,180 people it said its review of the city's voter rolls turned up as living at questionable addresses. The list was produced in the same manner as the first list of 5,619 names using a computer program to match data from the city's voter database with a U.S. Postal Service list of known addresses. It included 13,300 cases of incorrect apartment numbers and 18,200 cases of missing apartment numbers. City Attorney Langley, a non-partisan officeholder, called the GOP's request, "outrageous," adding, "We have already uncovered hundreds and hundreds and hundreds of addresses on their (original list) that do exist. Why should I take their word for the fact this new list is good? I'm out of the politics on this, but this is purely political."<sup>107</sup> Langley's review did find some addresses that do not appear to exist, and the *Milwaukee Journal-Sentinel* did its own limited investigation, finding 68 questionable addresses. "Others, though," it said, "were likely to be clerical errors."<sup>108</sup>

By Monday, officials from the state GOP and the City of Milwaukee worked out an agreement on how the registrations of voters with addresses challenged by the GOP would be dealt with at the polls. The list of 37,000 was pared back down to 5,512 and the city agreed to provide poll workers with the names of people in their wards from the list whose addresses appeared to be incomplete or inaccurate. Those people would be flagged if they showed up to vote and asked to show identification and/or re-register to update their records.<sup>109</sup> At the time Wisconsin law did not require pre-registered voters to show identification to vote at the polls, they only needed to state their name and address to receive a ballot.<sup>110</sup> The compromise deal with the Republican party imposed an identification requirement not mandated by law on people who made their way onto the GOP's list.

### ***Who bears responsibility for sloppy records and procedural meltdown?***

The *Journal-Sentinel* reviewed Milwaukee's voting records and found a number of unexplained discrepancies. The most troubling finding from the newspaper's detailed computer analysis was that as many as 1,242 votes, three-quarters of them cast by people registering on site on election day, appeared to have come from invalid addresses. Another 1,305 registration cards with discernible flaws such as missing addresses or missing names were accepted from voters on election day who were then allowed to vote.<sup>111</sup>

<sup>105</sup> Greg J. Borowski, "GOP Fails To Get 5,619 Names Removed From Voting Lists: City Commission Says Party Didn't Prove Case; Challenges Could Move to Polling Places," *Milwaukee Journal-Sentinel* (October 29, 2004), A1.

<sup>106</sup> Greg J. Borowski, "Vote Inquiry Sharpens Focus; Prosecutors Find Many Disputed Addresses Exist," *Milwaukee Journal-Sentinel* (October 30, 2004), A1.

<sup>107</sup> Greg J. Borowski, "Election 2004: GOP Demands IDs of 37,000 in City; City Attorney Calls New List of Bad Addresses 'Purely Political,'" *Milwaukee Journal-Sentinel* (October 31, 2004): A1.

<sup>108</sup> Borowski (October 31, 2004).

<sup>109</sup> "Milwaukee Vote Deal Reached on Dubious Addresses," *The Capital Times* (November 1, 2004), 5A.

<sup>110</sup> Wisconsin allows for election day registration. Same-day registration rules require new registrants to show some form of proof of residency, or, for those lacking proof, another registered voter may vouch for them.

<sup>111</sup> Greg J. Borowski, "Over 1,200 Voters Addresses Found Invalid; Some Mistakes Easily Explained, But Milwaukee Flaws Raise Concerns About Shoddy Record Keeping, Possible Fraud," *Milwaukee Journal-Sentinel* (January 25, 2005), A1; Greg J. Borowski, "Fraud or Bumbling, Voter Problems Still Unnerving to Public," *Milwaukee Journal-Sentinel* (January 30, 2005), A1.

The newspaper opined on its own investigation and reporting:

Republicans are quick to jump on the discrepancies, real or imagined, in voting data in Milwaukee as proof of widespread fraud in the big city. In their minds, the *Journal Sentinel's* findings fit that pattern. A more plausible explanation, however, is that the findings reflect the unfortunate tendency of voting systems throughout America to err.<sup>112</sup>

By the end of January, the Mayor had appointed an internal task force to review the city's electoral procedures, and federal and county law enforcement agencies began a joint investigation into whether breakdowns in procedure, poor record-keeping, human error or fraud explained the discrepancies. On February 10, the bipartisan Joint Legislative Audit Committee of the state legislature voted unanimously to direct auditors to review voter registration and address verification procedures. All of these investigations produced clear evidence that Milwaukee's Board of Elections was overwhelmed by its own incompetence and under-staffing on election day, resulting in massive record-keeping problems. Poll workers failed to follow procedures; the number of votes cast in Milwaukee failed to match the number of people recorded as voting; same day registration cards were not filled out properly and follow up was not performed when post-registration address verification efforts identified address discrepancies; some voters were allowed to register to vote in the wrong ward.

### ***The dénouement***

The scrutiny from federal, state and local law enforcement and elections officials produced several reports, an intensive review of voter registration practices in a number of Wisconsin cities, many recommendations for improving election administration and voter registration procedures, several later-vetoed photo ID bills in the state legislature, a variety of other legislative proposals, and very little conclusive evidence of voter fraud.

Widespread ignorance among the public and elections officials alike of Wisconsin's seldom enforced felony disenfranchisement laws account for the hundreds of ineligible felons post-election audits have found voted since 2000. Alleged illegal felon voting constitutes nearly all of the "voter fraud" reported on by the media in Wisconsin over the last six years, and represents most of the handful of cases prosecuted by the federal government. Wisconsin election crime laws require the establishment of a willful effort to defraud. Most of those identified as ineligible have not been prosecuted because they were never informed that they lost their voting rights until they completed their entire sentence. Until recently, Wisconsin's voter registration application form did not clearly indicate that felons on probation or parole were ineligible to vote. One of the federal cases against the dozen or so people charged with illegal (felon) voting in the 2004 election was dropped when it was revealed that the defendant had registered to vote on election day in Milwaukee using his state offender ID card.<sup>113</sup>

<sup>112</sup> Staff, "Widen Election Day Focus," *Milwaukee Journal-Sentinel* (January 26, 2005), A14.

<sup>113</sup> Gina Barton, "A Felon But Not A Fraud: No Charges For Voter With Prison I.D.," *Milwaukee Journal-Sentinel* (March 17, 2006). See, *United States of America v. Derek G. Little*, "Motion to Dismiss Indictment," United States District Court, Eastern District of Wisconsin, Case No. 05-CR-172 (LSA) (March 14, 2006).

# POLICY RECOMMENDATIONS

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This report has illustrated how the public is being manipulated about the problem of voter fraud.

Voting is a right, it's not a gift and it's not a privilege. Moreover, we can't have a democracy without the voters, and that means all voters, contributing to self-government. Therefore, layers upon layers of rules and bureaucracy to administer elections do not serve us well if they hinder electoral participation, which they do especially when the electorate expands. It is simply naïve to argue that the rules have nothing to do with turnout. On the other hand, it's true, the rules don't on their own increase turnout – issues, passion, competition, good candidates, effective communication and a diverse media – these are some of the factors that contribute to higher levels of electoral participation. But high interest campaigns and elections present precisely those conditions under which a complex regime of rules will have a depressing effect. When voter interest is high, partisans exploit the rules to determine the size and shape of the electorate they want.

Today partisans use the threat of voter fraud as an intimidation tactic. As our history shows, it is an old and reliable instrument for shaping the electorate by influencing the rules and procedures governing access to the vote. It is difficult to openly suppress voting in a democratic culture. The threat of fraud, however, if it's real, is enough to scare most people into accepting new rules that undermine the electoral participation of other voters - the unfortunate price, we are told, we must pay to keep our elections clean. The unraveling logic of this argument should be obvious. Unfortunately, reason flies out the window when we're scared.

We need better data, better election administration, transparency and more responsible journalism to improve public understanding of the legitimate ways in which electoral outcomes can be distorted and manipulated. Specifically:

1. States' chief elections officers should collect and maintain data on fraud allegations and enforcement activities and routinely report this information to the public. The data and methods used to collect it should be transparent and in the public domain.
2. To protect the right to vote and improve public confidence in the electoral process improvements to statewide, centralized voter registration databases must continue. Accurate registration records and methods for instantaneously certifying voter eligibility are the best defense against voter fraud.
3. To minimize mistakes, clerical errors, and duplication, state and local elections officials need to develop good, cooperative working partnerships with third party voter registration organizations that do a service to democracy by encouraging more people to register and vote.
4. States can go further and reduce the need for registration drives by fully implementing the agency-based voter registration requirements of NVRA and instituting same-day voter registration procedures. Ultimately, the states and federal government should provide a means to automatic universal voter registration.
5. To improve public understanding of voter fraud and more balanced reporting, state elections and law enforcement officials should educate journalists to ask for and recognize evidence of fraud when reporting on fraud allegations.

# APPENDIX: HOW TO IDENTIFY VOTER FRAUD

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Elections are instruments of democracy. They are the mechanisms for choosing representatives of the people's will, and they are widely regulated by law. Many different actors participate in the electoral process. Legislators and administrators make and implement the rules, candidates organize campaigns to run for office, voters cast their ballots, administrators count the ballots and elected officials certify the results.

The voters' role is simple – to make choices about candidates by casting legal ballots. Voters don't set deadlines for registering to vote, nor do they make the rules about how ballots are designed, displayed, or marked. They don't decide where the polls are located, when they are open, or what voting technology will be used. Voters have nothing to do with receiving completed ballots, determining valid ballots, counting or recounting ballots, tallying election results, or ensuring that the vote totals are accurate.

*Voters, like all other actors or groups in the electoral process, can only corrupt that part to which they have access.*

Voters, like all other actors or groups in the electoral process, can only corrupt that part to which they have access. They can do this directly, for example, by providing false information about their identity and/or eligibility in order to vote illegally, or indirectly through participation in a conspiracy, usually with others who have more authority and access to the marking and counting of ballots than the voters themselves possess.

*If the alleged fraud does not involve voters it should not be considered voter fraud.*

The first step in confronting any allegation of voter fraud is to identify who is alleged to have committed the fraud and to figure out if any voters are involved. If the alleged fraud does not involve voters it should not be considered voter fraud.

The second step is to identify which part of the electoral process was corrupted by fraud. Given their limited access, voters can only corrupt the registration and voting phases. They can't corrupt the vote tallying and counting phases where most election fraud has occurred in the past because they lack access to votes after they've cast them.<sup>114</sup> A fraudulent ballot

<sup>114</sup> The most thorough analysis of election fraud in the early twentieth century is the landmark 1929 study of voter registration procedures for the Brookings Institution by the inventor of the punch card voting machine, Joseph P. Harris. See, Joseph P. Harris, *The Registration of Voters in the U.S.* (Baltimore: The Lord Baltimore Press, 1929). Harris was a public administration reformer who promoted government modernization and the use of scientific administrative practices to remove politics from the business of governing. He concluded that elections were more badly managed than just about any other area of public administration and that political machines were responsible for much of the fraud he analyzed. The case studies of election fraud in Chicago, Philadelphia and Louisville, Kentucky, Harris presents all involved large scale conspiracies orchestrated by politicians and political machines which Harris thought rigged elections through ballot box stuffing and the manipulation of the count. His conclusion that most fraud occurred during the vote counting stage spurred him to invent the Votomatic Vote Recorder (the first punch card voting machine) which Harris hoped would reduce opportunities for election fraud by removing the ballot counting function from precinct workers. See, Joseph P. Harris, *Oral History*, interview by Harriet Nathan, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, California, 1980, available from <http://bancroft.berkeley.edu/ROHO/Vote/>.

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is one that was not cast legally. But the definition of a legal ballot varies according to the rules that qualify eligible voters to vote and govern the procedures for casting a ballot in the different states.

### ***Fraud in Voter Registration***

To its earliest proponents, voter registration was intended as an anti-fraud safeguard. Registration fraud is typically punished less severely than fraud in voting and this is as it should be. What matters most to the integrity of electoral outcomes is the casting and counting of an illegal ballot. A person who provides false information on a voter registration application but never casts a ballot is less of a threat to electoral integrity than one who negates or dilutes the will of the voters by casting an illegal ballot. This is not to say that voter registration fraud is a negligible crime or should be tolerated. The available evidence suggests voter registration fraud is rare, but when it does occur, if it goes undetected it can compromise the accuracy of the voter rolls. When it's caught it burdens the elections and law enforcement officials who find it and must address it.

Since voters can perpetrate it, even if they rarely do, for purposes of this report we will consider voter registration fraud a form of voter fraud, along with all forms of illegal voting. However, when voter registration fraud is committed by a campaign volunteer or a paid canvasser, we should not consider the crime 'voter fraud.'<sup>15</sup> Doing so only adds to public confusion about what should be done to eliminate opportunities for fraud.

### ***Fraud in Voting***

Under most state and federal laws a vote is considered illegal when it is cast improperly by an unqualified or ineligible voter. The voter must be qualified and the vote cast according to the rules governing the act of voting under state and federal law. Both elements – the voter and the act of voting – must be legal or the vote is illegal.

### ***The difference between an eligible and a qualified voter***

To be legal, an **eligible** voter must be **qualified** by the state to vote. This raises questions about the difference between an 'eligible' voter and a 'qualified' voter. The centuries long struggle for the franchise in the U.S. established a common law right to vote and constitutional bans on voter discrimination by race, color, gender, or age (over the age of 18), but no constitutional right to vote. The lack of an affirmative right to vote in the Constitution and the delegation of authority to the states to determine voter qualifications and oversee election administration are peculiar features of American democracy. The Constitution explicitly grants the states the power to set voter qualifications, reserving authority to Congress to regulate only "the times, places and manner of holding elections for Senators and Representatives."<sup>16</sup>

***"Eligible" voters are those whose age and citizenship status, and in some cases absence of a felony conviction allows them to be credentialed or "qualified" by the states as legitimate or legal voters. "Qualified" voters, therefore, are those eligible voters who complete a state's procedures for casting a legal ballot.***

Because the Constitution vests power to 'qualify' voters in the states, as long as they do not unconstitutionally discriminate against people by race, color, gender or age, they may make different rules for qualifying voters, and they do. This is why the definition of a legal vote varies across the states, especially with regard to residency and felony disqualification rules. Consider,

<sup>15</sup> For an example of how the voter fraud label is commonly misused, see "2 Signature Gatherers Sentenced in Orange County Voter Fraud Case," *Associated Press* (1/4/07), 17 News Online, available online at [www.kget.com/news/state/story.aspx?content\\_id=6b487526-37ac-43e9-a5b0-496674b9d5e1](http://www.kget.com/news/state/story.aspx?content_id=6b487526-37ac-43e9-a5b0-496674b9d5e1).

<sup>16</sup> But, "the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." See, U.S. Constitution, Article I, section 4.

for example, the ballot of an otherwise eligible and qualified voter with a felony conviction who is no longer under state supervision. If that citizen lived in Maine and registered to vote by or on Election Day, his or her vote would count as a legal ballot. If that citizen lived and voted in Florida where a felony conviction eliminates the right to vote until clemency is granted, he or she could be prosecuted for casting an illegal ballot.

In fact, states make lots of rules for qualifying voters. The most important is the requirement that all eligible voters register. All states except North Dakota require eligible voters to register before casting a ballot.<sup>117</sup> Thus, all states except North Dakota qualify eligible voters by requiring them to meet certain conditions in order to register their names on the rolls of legitimate or valid voters. Voter registration, therefore, is a means of voter qualification, and in nearly all states, otherwise eligible voters must be registered properly or the vote they cast is illegal.<sup>118</sup> In addition, ineligible voters, such as those disqualified by state law for a felony conviction or because they do not possess U.S. citizenship,<sup>119</sup> could register to vote either mistakenly or by deceit, thus appearing on the voter rolls as 'qualified' voters despite their ineligibility. Their votes would be treated as legal votes when in fact they would be illegal.

There are a few known cases of ineligible persons such as non-citizens making it on to the voter registration rolls due to a misunderstanding about who has the right to vote in American elections, or to mistakes made by elections officials who misinformed such applicants or failed to note their lack of citizenship. One involves the case of Mohsin Ali, a long-time legal permanent resident living in Florida at the time of his arrest for "alien voting." He pleaded guilty but claimed a clerk in the Department of Motor Vehicles issued a voter registration application to him when he renewed his license. In a letter begging the judge to intercede with immigration authorities considering Ali's deportation back to Pakistan, Ali claimed he told the clerk he was a Florida resident but not a U.S. citizen.<sup>120</sup> He states that the clerk told him as the husband of an American citizen he was eligible to vote. When Ali received a voter registration card in the mail he assumed he was qualified to vote and voted in the 2000 presidential election.<sup>121</sup>

Voters have limited access to the electoral process, but where they do interact with it they confront an array of rules that can trip them up and change depending on where they live. The more rules and restrictions, the more stumbling blocks voters face when trying to cast legal ballots. For example, in Pennsylvania where a voter must qualify with an excuse when applying for an absentee ballot, it is illegal to vote that ballot if the voter's plans change and he or she remains physically present at home (barring a disability that prohibits the voter from visiting the polling place). A voter must apply for an absentee ballot a full week before Election Day. What happens if plans change or the business trip gets canceled and the voter is present on Election Day, after all? If that voter then mails in the ballot instead of striking out for the line at the polling place, that voter is breaking the law in Pennsylvania. Who knew? Who wouldn't make

<sup>117</sup> North Dakota repealed its voter registration law in 1951. To vote in North Dakota eligible voters must have proper identification showing their name and current address. If they lack identification, they may still vote by filing a voter's affidavit attesting to their identity and address, or if a poll worker knows them and can vouch for them. Poll workers use lists of previous voters to track voting on Election Day.

<sup>118</sup> The courts have dealt with the question of whether voter registration is an unconstitutional burden on the vote by using a balancing test, weighing the alleged burden on rights against a state's legitimate interest in ensuring electoral integrity. State laws mandating voter registration have been upheld repeatedly by the Supreme Court as reasonable administrative burdens on the right to vote ("a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot," *Marston v. Lewis*, 410 U.S. 679, 680, (1973)).

<sup>119</sup> Federal law does not require persons be U.S. citizens to vote, but all states do, as it is their constitutional prerogative to set citizenship as a condition for voter eligibility and qualification.

<sup>120</sup> Letter from Mohsin Ali to the Honorable William C. Sherrill, Jr., Chief U.S. Magistrate Judge, U.S. District Court, Tallahassee, Florida; dated November 3, 2006. The judge denied Ali's request.

<sup>121</sup> *U.S. v. Mohsin Ali*, U.S. District Court, Northern District of Florida, Tallahassee Division, Case No. 4:05cr47-WCS.

things easier and drop the ballot in the mailbox? The more complex are the rules regulating voter registration and voting, the more likely voter mistakes, clerical errors, and the like will be wrongly identified as “fraud.”

Eligible voters may nevertheless fail to *qualify* as legal voters because they fail to register properly – usually their ballots would be considered illegal. Illegal ballots, however, may also result from qualified – or properly registered – voters failing to follow the rules for casting a ballot under state law. As the following table suggests, expanding rules create more ways to cast an illegal ballot than a legal one.

**Voter Eligibility, Voter Registration and Legal Balloting**

Voter	Registered	Voter Is	Vote Is Cast	Ballot
Eligible	Yes	Qualified	Properly	Legal
	Yes	Qualified	Improperly	Illegal
Not Eligible	No	Not Qualified	Properly or Improperly	Illegal
	Yes	Improperly Qualified	Properly	Illegal
			Improperly	Illegal
	No	Not Qualified	Properly or Improperly	Illegal

As states and localities continue to loosen restrictions on the time and place for casting a legal ballot, qualified voters will face more options for casting their ballots. The lack of uniformity increases complexity of the rules and unintended consequences proliferate. For example, the growth of early and mail voting is generally considered positive because these reforms make voting more convenient by opening up more avenues for casting legal ballots. Voters in many

*But one consequence of expanding voting opportunities is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.*

states may now cast their ballots at a town clerk’s office two weeks before the election, by mail, or in person at the polling booth on Election Day. But one consequence of expanding voting opportunities is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.

In fact, several recent cases of alleged voter fraud involved legal voters who mailed in their ballots and then showed up at the polls on Election Day because they either forgot mailing in their ballots or, distrusting the absentee balloting process, wanted to be sure that their votes were counted by voting again. They used their real names to try to vote twice because they were confused.<sup>122</sup> Poor record management on the part of elections officials was the problem, but voters got the blame. As the options and rules expand they increase the possibility that voter misunderstandings will be labeled ‘voter fraud.’

<sup>122</sup> See, for example, Susan Greene and Karen Crummy, “Voter Fraud Probed in State; Double Dippers. *Flavors Unrepeated*, Denver Post (March 24, 2005).

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# ABOUT THE AUTHOR

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Lorraine C. Minnite holds a Ph.D. in political science and teaches courses on American and urban politics at Barnard College, in New York City. In 2003, she co-authored (with David Callahan), *Securing the Vote: An Analysis of Election Fraud* for Dēmos: An Network for Ideas and Action, and is currently finishing a book on the politics of voter fraud in contemporary American elections.

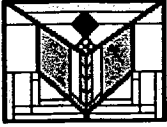


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Adam Ambrogi/EAC/GOV  
08/07/2006 03:31 PM

To "Tim Hurst" <thurst@sos.idaho.gov>  
cc Sheila A. Banks/EAC/GOV@EAC  
bcc  
Subject Fw: EAC RESEARCH

Dear Mr. Hurst:

Hope all is well. Thanks for your request for the May Standards Board materials. Attached are the DRAFT documents that we provided to the Standards Board members for the May meeting. Note that these are not final papers, but works in progress. I'm also providing the information for Sheila Banks, who is Special Assistant to Commissioner Hillman, sbanks@eac.gov, and she can be reached at 202-566-3100. Ms. Banks can assist you with further Standards Board questions.

Thanks very much.

Adam Ambrogi

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Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
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202-566-3105

TABS:

- 1) Meeting Agenda (SB, BOA)
- 2) Board Roles and Responsibilities (SB BYLAWS, BOA STATUTORY EXCERPTS)
- 3) Board Membership List (SB LIST & BIOS; BOA Membership List)
- 4) Minutes of Previous Meeting (SB REPORT, BOA MINUTES)
- 5) Design for Democracy
- 6) Election Day Draft Survey
- 7) Language Working Groups
- 8) NIST/TGDC Update (VVPAT Module)
- 9) Poll Worker (College Poll Worker) Research
- 10) Election Management Guidelines (Quick Start Guide)
- 11) Provisional Voting Draft Report
- 12) Vote Count/Recount Research







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13) Voter Identification Research (tab will be empty)





14) Voting Fraud/Voter Intimidation





If you have ANY questions or concerns, please call!!!



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SB Report.pdf BoA Agenda.pdf BoA Minutes of Previous Meeting.pdf BoA Statutory Excerpts.pdf SB Agenda.pdf SB Bios.pdf

      
SB Bylaws.pdf SB Lists.pdf BoA membership list.pdf Voting Fraud.Voter Intimidation.pdf College Poll Worker Research.pdf

     
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NIST TGDC Update.pdf Poll Worker Research.pdf Provisional Voting Draft Report.pdf Vote Count Recount - Item 1.pdf

   
Vote Count Recount - Item 2.pdf Vote Count Recount - Item 3.pdf

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## **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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### **1. Introduction and Report Background**

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

### **2. Voter Identification –Background and Approach of the Study**

Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The burden of providing required ID documents on the voter may be greater at the polls on Election Day than at the time of registration. The burden of checking ID, even as simple as a signature match, can be much greater on election workers at the polls than on those registering voters. Poll workers may be faced with long lines and limited time. This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>1</sup> The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

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<sup>1</sup> As the Carter-Baker Commission noted, photographic ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify identification. Commission on Federal Election Reform, pp 46-47.

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ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

This analysis takes a view of voter ID issues broader than the rather narrow identification requirements in HAVA. Much of the national ferment over voter ID goes beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those casting a ballot for the first time who had not registered in person. The controversy in the states over voter ID stems from the HAVA requirements, goes beyond those requirements, and sets the context for the analysis here.<sup>2</sup>

Identification is often described as the critical step in protecting the integrity of the ballot, the process that ensures that the potential voter is eligible and permitted to cast a ballot and one ballot only. In fact, ensuring ballot integrity requires a perspective that takes in the entire voting process. Protecting the integrity of the ballot requires more than preventing the ineligible from voting. It also should ensure that all those who are eligible and want to vote can cast a ballot that counts, and that they can effectively cast a ballot for the candidate of their choice. The protection effort must take into account all forms of voting, including absentee ballots, and embrace each step in the process. A voting system that establishes onerous requirements for voters to identify themselves may prevent the ineligible from voting, but it may also prevent the eligible from casting a ballot. If the ID requirements of a ballot protection system block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or forget to bring to the polls the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This analysis does not include consideration of the incidence of vote fraud, the forms that it takes, nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. The EAC has commissioned a separate study of vote fraud and instructed us not to address that issue in this research.

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<sup>2</sup> Harvard Law Review 119:1127. "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA. . . . HAVA makes explicit that it shall not 'be construed to prevent a State from establishing election technology and administration requirements that are more strict than' HAVA itself provides. The states have accepted the invitation. "

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Nonetheless, a broad view of ballot integrity is needed to appreciate the background and context of this narrower study. We explore the inter-relationships between Voter ID requirements and Provisional Voting and estimate the effects of various voter id requirements on turnout and on the casting of provisional ballots.

Voters lacking required ID, or who have ID that does not reflect their current address, may be able to vote only by casting a provisional ballot.<sup>3</sup> To the extent that stricter voter ID requirements divert more voters to the provisional ballot, voter ID requirements can put stress on the already pressured management of the polling place. Administering provisional ballots is more expensive than the normal ballot. Scrutiny of ID can create lines at the polling places, lines made longer as voters are diverted to the provisional voting line. Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle that will keep more citizens from the polls. A review of voter identification practices should keep in mind that America's problem may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes will be more effective if based on clear standards --legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

- Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?
- How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>4</sup>
- How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity

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<sup>3</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>4</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

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that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>5</sup>

- How cost-effective is the system? Does it increase the security of the ballot at an affordable cost, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.
- If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>6</sup>
- Does it comply with the letter and spirit of Voting Rights Act?
- The seventh question is more difficult to measure than those described in the 6 questions outlined above. The Voter ID requirements should have a neutral result on the composition of the qualified electorate. That is, those requirements should not be designed to reduce the turnout of particular groups of voters who may have a propensity to support one party over another. Whatever the requirement may be, all citizens should be able to comply with it easily and at no or minimal cost.

### Summary of findings and conclusions

Voter turnout at the state level in 2004 declined where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Including other factors beyond voter id requirements diminishes the influence of voter ID on turnout. But the analysis still offers some support for the hypothesis that as the burden of voter identification

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<sup>5</sup> In New York, in 2004, disparities in training and voting information were made all too apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>6</sup> For example, the Carter-Baker Commission accompanied its recommendation for a national voter ID card with a recommendations for an affirmative effort by the states to reach out and register the unregistered, to use the new Voter ID regime as a means to enroll more voters.

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requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>7</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

### Recommendations for consideration and action by the EAC

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice that before states adopt a change described as increasing ballot security, states should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. The data should be analyzed to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent and should describe the dynamics of voter ID in preserving the security of the ballot?

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<sup>7</sup> Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

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- Useful information could be supplied by exit polling. It would identify those who had cast a provisional ballot and ask why they were unable to cast a regular ballot. Answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
- Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter id requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three criteria: the convenience of the voter, the total time allowed to evaluate ballots<sup>8</sup>, and the safe harbor provision in presidential elections.

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<sup>8</sup> Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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**3. Voter ID and Turnout**

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility.

**TABLE 1 -- Voter ID Requirements**

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later

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New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Match Sig.	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID*****	Provide ID	Bring ID Later
Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

\*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

\*\*State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

\*\*\*Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

\*\*\*\*Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

\*\*\*\*\*Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

\*\*\*\*\*Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

In 9 states, voters were required merely to state their names so that poll workers could locate them in the registration book. In 14 states, voters signed their names. In 8 states, voters' signatures were matched with a specimen signature. In 15 states voters had to show some form of ID, not necessarily an official picture ID. And in 5 states, voters were required to show an official photo ID, although in 2004 voters who lacked a picture ID could execute an affidavit and vote a regular ballot.

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This neat assignment of each state to one of a few categories may fail to reflect actual practice at a polling place. Like any system run by fallible people it is subject to wide variation in practice. Voters may be confronted with demands for identification at variance with state statutes or legislation. Other voters may be waved through the process without a look at any document, no matter what the regulations may say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters may encounter.

It is not practical to attempt to capture the wide variety of how voter ID requirements may be actually implemented across the nation's tens of thousands of polling places. Recognizing that means that the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

### Effect of Voter ID requirements on Turnout

#### Summary of Findings and Conclusions

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau.<sup>9</sup>

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each

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<sup>9</sup> See Appendix \_\_\_ for the full report on voter ID and turnout.

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level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

### Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. a form of identification, and providing a form of photo identification.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

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Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	63.1 %	State Name	61.3 %
Sign Name	58.6 %	Sign Name	60.4 %
Match Signature	62.1 %	Match Signature	59.2 %
Provide Non-Photo ID	57.8 %	Provide Non-Photo ID	57.6 %
Provide Photo ID	57.3 %	Swear Affidavit	58.7 %
Average Turnout (All States)	59.6 %		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground for president, governor or senate voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-

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Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line.

In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. (Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting.) Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age in years, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note

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that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

### Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

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- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.
- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

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effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

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#### 4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*,

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Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

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suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

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### 5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

#### State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

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HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

### 6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.<sup>10</sup> The dynamics of Voter ID requirements—how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That research might address that, so far as may be

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<sup>10</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." The exclusion of voters through restrictive ID requirements could affect election outcomes as much as fraud by voters at the polls. *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 18, 2009 38



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necessary to reduce vote fraud, could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended by our colleague Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.<sup>11</sup>

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<sup>11</sup> "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. These electronic photos should satisfy the anti-fraud concerns of conservatives as much as printed photos that citizens would be required to bring to the polls. . . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier."

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### Appendices

- a. Summary of case law on Voter ID issues (included with this draft)
- b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
- c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
- d. Compendium of states' legislation, procedures, and litigation

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### APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

#### Court Decisions

#### Summary of Relevant Cases:

#### Challenges Prevailed:

##### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

##### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

#### Challenges Rejected:

##### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

##### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

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- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

### *McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

### *Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

### *Perez v. Rhiddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

### **Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

#### ***American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).***

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

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between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

### ***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

### **Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

#### ***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

#### ***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

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provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

### ***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

### ***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

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several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

### ***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

### ***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

### **Current Litigation Concerning Voter ID Issues<sup>12</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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<sup>12</sup> As of January 2, 2006

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### **Georgia** (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>13</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>14</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

### **Indiana** (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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<sup>13</sup> Litigation documents are available at the Election Law @ Moritz website.

<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>14</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>15</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>15</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

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## APPENDIX

### Annotated Bibliography on Voter Identification Issues

#### Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

#### Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

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- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

### Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
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  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
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  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
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Appendix

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Karen Lynn-Dyson/EAC/GOV  
03/22/2006 06:04 PM

To Bert A. Benavides/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Brian  
bcc  
Subject 

All-

About a week ago you received a copy of the Eagleton draft report on Voter Identification. As you know, Eagleton will be coming to EAC on April 3 to do a project close-out meeting with the agency.

Should you have comments or edits that you would like me to pass along to Eagleton, regarding their draft report on Voter ID, please get them to me by **COB Friday, March 24**. so that I may pass them along to Eagleton for inclusion in their final document.

Thank you

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

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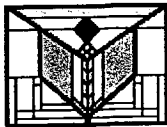


Laiza N. Otero/EAC/GOV  
03/27/2006 01:25 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Data Collection.

Thank you for the information. I shall include in my list of discussion topics for the small group sessions with the election officials.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202) 566-1707  
Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV  
03/27/2006 12:10 PM

To Laiza N. Otero/EAC/GOV@EAC  
cc  
Subject Data Collection.


hey-- an idea...  
From Eagleton ID report[below]... perhaps something to discuss for addition in the Data collection project-- asking pollworkers to keep the numbers of those people turned away for lack of eligibility....

Would be helpful.  
Adam

...States should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

Karen Lynn-Dyson/EAC/GOV  
03/27/2006 03:08 PM

To Adam Ambrogi/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Question 

Had planning on integrating all of the Commissioner's comments through Wednesday and passing them on to Eagleton.

As you know Commissioners will meet with Eagleton next Monday. Depending on the feedback I may bring up the report on Thursday.

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

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Karen Lynn-Dyson/EAC/GOV

03/31/2006 03:09 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, Thomas R.  
cc Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Elieen L. Colver/EAC/GOV@EAC,  
bcc

Subject Fw: Revised Voter ID Paper

See below. A revised version of the Eagleton paper to be discussed at Monday's meeting.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/31/2006 02:03 PM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
03/31/2006 08:42 AM

To klynndyson@eac.gov  
cc

Subject Revised Voter ID Paper

Karen,

Attached is a new draft of the Voter ID paper, revised to take into account the comments you gave us on Tuesday as well as some points raised recently by other reviewers. We'll be bringing hard copies of this draft with us to Monday's briefing. If you could distribute the new "Executive Summary" (pages 1 – 5) in advance to those who will take part in the meeting on Monday, I think the discussion would be improved.

Our train is scheduled to get into Union Station at 10:30 on Monday. Barring Amtrak delays, we should arrive at your offices shortly before 11.

Tom O'Neill



VoterIDReport0330.doc

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# **FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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## **Report Background**

This report to the United States Election Assistance Commission (EAC) presents an analysis of voter identification requirements across the country and makes recommendations for best practices to improve implementation of voter ID requirements at the polls. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under a contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

## **Executive Summary**

### Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. The five categories are progressively more rigorous based on the demands they make on both voters<sup>1</sup> (and, to some extent) on election workers. The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample,

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<sup>1</sup> Even the most relaxed provisions for identification at the polls — anything stricter than the honor system used in North Dakota — will impose some burden on particular voters. *Harvard Law Review* 119:1146



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which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents are not uniformly and conveniently available to all voters.

We collected data on turnout in all counties to permit an estimate of the relationship between the rigor of the ID requirements and the level of turnout. This aggregate analysis is useful, but does not provide valid estimates on the effects of different kinds of ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates.) To allow that analysis, we used the Census Bureau's Current Population Survey from November 2004, which asked a large sample of Americans about their experience in the election. It has the disadvantage of relying on self reports by respondents about their registration status, citizenship, and experience in the polling place, but it provides the demographic data needed to supplement the aggregate analysis.

To understand the legal issues raised by voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints to policies on voter ID requirements.

### Findings

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.

Voter turnout at the state level in 2004 was lower in states where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required

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voters to state their names, compared to 57.3 percent in states that required photo identification. Those figures, however, probably overstate the effect since the inclusion of other factors beyond voter ID requirements in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of the other factors, the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or people living below the poverty line.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>2</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the

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<sup>2</sup> Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

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ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

### Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous Voter ID requirements affect the decision by potential voters to go or stay away from the polls-- are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice the publication of a “Voting Impact Statement” by states considering changing their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should analyze this publish an analysis of this information to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. The states should also be encouraged to use this information to increase the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
  - Useful information could be supplied by exit polling or surveys of voters by local election officials. It would make clear why those who cast a provisional ballot

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were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.

- Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>3</sup>, and the safe harbor provision in presidential elections.
- Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

### Background and Approach of the Study

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The stress on voters to provide required ID documents may be greater at the polls on Election Day than when registering. The pressures arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may be faced with long lines and limited time.

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<sup>3</sup> Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>4</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures on voter ID goes ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. The controversy in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>5</sup>

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>6</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

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<sup>4</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

<sup>5</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

<sup>6</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>7</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>8</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the

---

<sup>7</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>8</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

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polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes can be more effective if based on clear standards –legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>9</sup>
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>10</sup>
3. How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>11</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>12</sup> A thorough, objective

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<sup>9</sup> “Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . .” Harvard Law Review 127:1144 (2006)

<sup>10</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>11</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state’s voter identification requirement actually was. Tova Wang, “Warning Bell in Ohio,” December 5, 2005. Website, the Foundation for National Progress.

<sup>12</sup> “Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at

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impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>13</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another. Whatever the requirement may be, can all citizens comply with it easily and at no or minimal cost?

### **Voter ID and Turnout**

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID.

This neat assignment in the following table and map of each state to one category no doubt fails to reflect actual practice at many polling places. Like any system run by fallible people, the voter ID process is subject to wide variation in practice. Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Some voters may be waved through the process without a look at any document, no matter what the regulations say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters actually encounter.

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administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." *Harvard Law Review* 127:1144 (2006)

<sup>13</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen Hasen's has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," *62 Washington and Lee Law Review* 937 (2005).

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**TABLE 1 -- Voter ID Requirements**

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID^	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID*****	Provide ID	Bring ID Later

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Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

\*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

\*\*State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

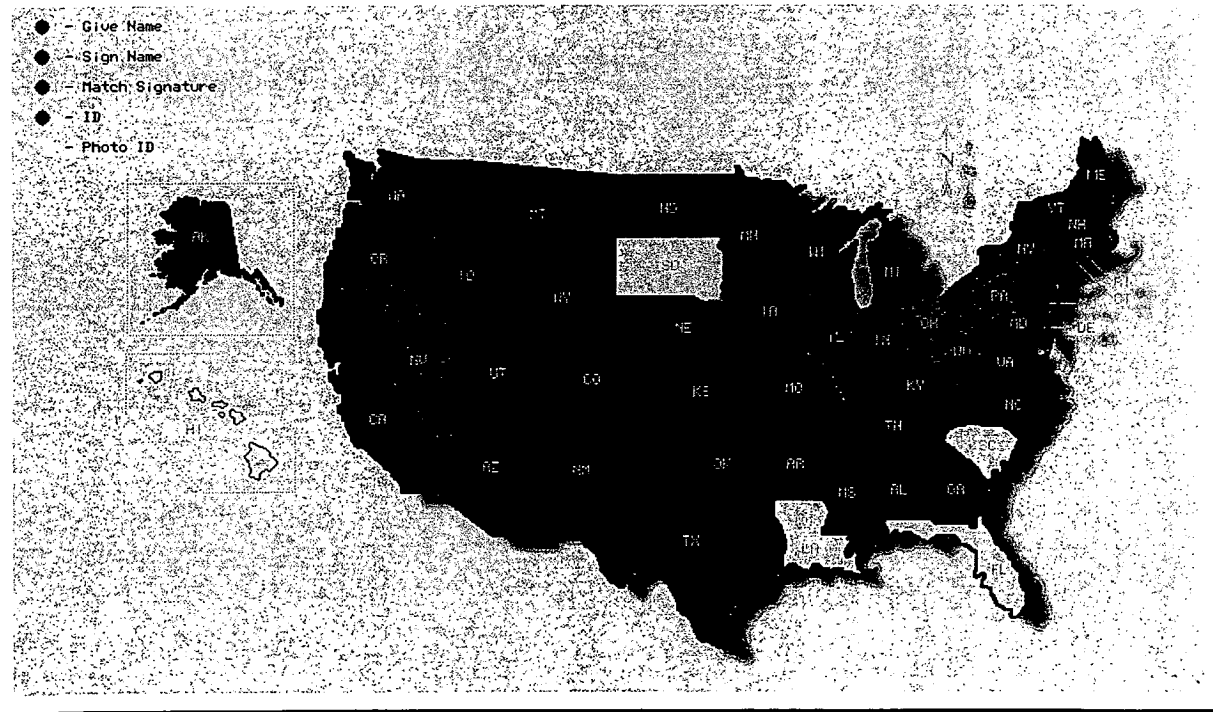
\*\*\*Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

\*\*\*\*Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

\*\*\*\*\*Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

\*\*\*\*\*Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

**Figure 1**



**Voter ID Requirements 2004**

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Since it is not practical to attempt to capture the wide variety of how voter ID requirements are actually implemented across the nation's tens of thousands of polling places, the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

### Effect of Voter ID requirements on Turnout

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau.<sup>14</sup>

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

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<sup>14</sup> See Appendix \_\_\_ for the full report on voter ID and turnout.

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### Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit is regarded as the most rigorous.

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

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**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	63.1 %	State Name	61.3 %
Sign Name	58.6 %	Sign Name	60.4 %
Match Signature	62.1 %	Match Signature	59.2 %
Provide Non-Photo ID	57.8 %	Provide Non-Photo ID	57.6 %
Provide Photo ID	57.3 %	Swear Affidavit	58.7 %
Average Turnout (All States)	59.6 %		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors can place the effects of voter identification in a more accurate context. The multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line. In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. The decline in turnout is particularly noticeable in counties with concentrations of Hispanic residents or individuals who live below the poverty line. Determining if the reduction in turnout is, in fact, among the Hispanic or poor residents of those counties requires further research at the individual level.

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Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting. Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

### Discussion and Conclusions of the Analysis

The results give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.

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- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the self-reports of elderly voters, while indicating that they would be slightly less likely to vote as ID requirements become stricter, do not show a dramatic effect.

The data examined in this analysis could not capture the dynamics of how identification requirements lower turnout. Do know the voter ID and stay away from the polls because they cannot or do not want to meet them? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

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### Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*,

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Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

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suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

### **Developments since 2004**

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

### **State Voter Databases and Voter ID**

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

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HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

### 6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.<sup>15</sup>

The dynamics of Voter ID requirements—how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in

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<sup>15</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.<sup>16</sup>

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<sup>16</sup> "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

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### Appendices

- a. Summary of case law on Voter ID issues (included with this draft)
- b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
- c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
- d. Compendium of states' legislation, procedures, and litigation

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### APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

#### Court Decisions

#### Summary of Relevant Cases:

#### Challenges Prevailed:

##### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

##### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

#### Challenges Rejected:

##### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

##### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination

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- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

### *McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

### *Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

### *Perez v. Rhiddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

### **Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

#### ***American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).***

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

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between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

### ***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

### **Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

#### ***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

#### ***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that

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provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

### ***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

### ***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

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several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

### ***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

### ***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. . Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

### **Current Litigation Concerning Voter ID Issues<sup>17</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

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<sup>17</sup> As of January 2, 2006

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### **Georgia** (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>18</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>19</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

### **Indiana** (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

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<sup>18</sup> Litigation documents are available at the Election Law @ Moritz website.

<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>19</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>20</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>20</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

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### APPENDIX

#### Annotated Bibliography on Voter Identification Issues

##### Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

##### Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

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- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

### **Marginally relevant/limited discussion of Voter ID issues**

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
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  - Discusses illegal ballots, fraudulent registration
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  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
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  - Theory

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Appendix

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

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## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

### NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

#### **Absentee Ballots**

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

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- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio, and Pennsylvania.

#### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.



As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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U.S. ELECTION ASSISTANCE COMMISSION  
STANDARDS BOARD MEETING

Taken at the Hamilton Crown Plaza Hotel  
1001 14th Street, Northwest  
Washington, D.C.

Taken on the date of:  
Tuesday, May 23, 2006

21 start time: 10:00 o'clock, a.m.  
22 Taken before: Pauline Jansen, court reporter

- 1 AGENDA:  
2 Brief Welcoming Remarks                      Commissioner Ray Martinez  
3 EAC Staff Presentations:  
4 Legal on-line Information  
5 Clearinghouse                                      Julie Hodgkins  
6 Design for Democracy                              Karen Lynn-Dyson

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7 Public Access Portals Edgardo Cortes  
8 Spanish and Asian Language  
9 Working Groups Edgardo Cortes  
10 Standards Board Plenary Session: Peggy Nighswonger  
11 1) Adoption of Parliamentary  
12 2) Adoption of Agenda  
13 3) Review of Meeting  
14 4) Review of Present Standards Board Bylaws  
15 5) Briefing on Re-adoption of Standards Board Charter  
16 6) Election of Executive Board Vacancy  
17 DISCUSSION DRAFT REPORT ON PROVISIONAL VOTING  
18 Presenters: Thomas O'Neill and Edward Foley  
19 DISCUSSION: RESEARCH ON POLL WORKER RECRUITMENT,  
20 TRAINING AND RETENTION  
21 Presenters: Jennifer Collins-Foley and Abby Horn  
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1 P-R-O-C-E-E-D-I-N-G-S  
2 MR. MARTINEZ: Good afternoon, everybody.  
3 Please continue with your lunch. We are going to get  
4 started with the program. And what I am going to do for  
5 a quick two or three minutes is just to lay the  
6 groundwork if you will and try to let you all know what  
7 we are going to attempt to accomplish over the next  
8 couple of days. And give you an idea as to what issues  
9 we hope to put in front of you et. Cetera.  
10 Again I am Ray Martinez. I am a Commissioner  
11 with the U.S. Elections Assistance Commission. I do  
12 want you to recognize my esteemed colleague the former  
13 Secretary of State of the great State of Colorado and  
14 now Commissioner with EAC, Betty Davidson. Madame  
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15 Commissioner if you will stand up ( Applause).

16           what we hope to accomplish-- well, we are  
17 here to discuss and get advice, the EAC, to get advice  
18 from our Statutory Advisory Boards. We have two main  
19 Statutory Advisory Boards created by(inaudible) which  
20 is our government statute. One is the Board of Advisors  
21 which is meeting up on the second floor and is  
22 conducting concurrent meetings doing and hearing

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1 exactly the same issues that you all will be hearing  
2 about as well.

3           we have a presenter upstairs and as soon as  
4 they are done we switch places and we will run  
5 concurrent agenda with the Board of Advisors up stairs.

6           And of course our second important Advisory  
7 Board committee is this great body right here and that  
8 is the 110 Member Standards Board.

9           what we have done in preparing your agenda  
10 for this particular meeting is different from what we  
11 did in Denver last September, In Denver last September  
12 we had a very important issue that we had to put before  
13 our two Statutory Advisory Boards and the Board of  
14 Advisors met separately for that meeting in a different  
15 location.

16           what we did is focus on the voluntary voting  
17 system guidelines lines back in Denver back in  
18 september of last year. We broke up into break out  
19 sessions on the various aspects of the BBSG, security,

20 accessibility human factors et cetera. We had a very  
21 productive meeting about the voluntary voting system  
22 guidelines.

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1           For this particular meeting what you have is  
2 an agenda full of Commissions and working EAC research  
3 projects. Just about our full research agenda will be  
4 presented to you throughout the next two days. And the  
5 reason for us to do that is because the EAC-- a very  
6 important function of the EAC in addition to working as  
7 your full partner in implementing the various  
8 requirements in HAVA will also be a national clearing  
9 house for best practices on election administration.  
10 And to be able to fully play and fulfill that role as  
11 an agency it is incumbent upon us to commission  
12 objective and professional and sound research so we can  
13 fully inform our partners in the election community and  
14 in the advocacy community, all our stake holders as to  
15 what we find our best practices in election  
16 administration.

17           So you will hear a series of presentations  
18 that begin almost immediately as soon as I get off the  
19 podium here. They will start to tell you here are the  
20 things that we are working. And the goal that we want  
21 to try to accomplish in the next day and a half is to  
22 get your candid advice of what we are working on. I

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1 strongly encourage as much feed back questions whether  
2 they are positive or challenging. We want to get a  
3 sense of direction on the projects we are going to be  
4 presenting to you over the next day and a half. So we  
5 want to encourage your candid interaction as you hear  
6 these presentations and we need to get fully informed  
7 as to the direction that we are headed.

8           So the goal of this meeting is to give you a  
9 full briefing of all of our research projects we are  
10 working on. If you look at the agenda you will see at  
11 the end of the next day and a half, meaning tomorrow  
12 afternoon, you will have a two block. And that block  
13 can be extended even further if necessary for a plenary  
14 session time were you will be able to talk among  
15 yourselves as members of the Standards Board and to  
16 discuss what you heard from the EAC and if necessary  
17 if it is so desired pass resolutions and speak formally  
18 as a Standards Board, as an Advisory Board as to your  
19 collective opinion about the work that we are doing  
20 here.

21           We truly value the feed back we get from all  
22 of you. We don't just meet in a vacuum. I see so many



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1 faces out in this room that we at the EAC call on just  
2 about every day for advice and for input.

3           So it is a very unique situation for us to  
4 have so many of you that we call upon almost daily to  
5 have you all collectively in the same room and to be  
6 able to draw from your vast experience and expertise  
7 for the next day and a half. We feel very fortunate to  
8 have you here. We are very thankful that you have  
9 traveled a great distance for many of you to spend the  
10 next day and a half with us. Thank you in advance.

11           So with that let me say I do need to  
12 announce anybody that needs to have an interpreter or  
13 signage can come and sit in the front row or we will  
14 make better accommodations for you to have a better  
15 view of the interpreter. This meeting is open to the  
16 public as have all of our Standards Board meetings have  
17 been. So there is a section in the back where non  
18 Standards Board Members are present. However Q and A  
19 and actual interaction is limited to the Standards  
20 Board members who are present. The members of the  
21 public who are here may observe but they may not ask  
22 questions or engage in any of the discussions or

1 presentations. It is strictly for the members of the  
2 Standards Board.

3           After we do some quick presentations here for  
4 the remainder of our lunch hour this meeting will be  
5 turned over the members of your executive board,  
6 meaning your acting chair, Peggy Nighswonger and her  
7 colleagues on the Executive Board, will then come up to  
8 the head table and begin to work you through the agenda  
9 and solicit your feed back.

10           So with that I will go ahead and ask our  
11 first presenter, our current General Counsel, Julie  
12 Thompson Hodgkins to come up and give us a brief  
13 presentation on our Legal Resources web page. After  
14 that we will have three more presentations. And then we  
15 will take a break and go into your first Plenary  
16 session. Julie, if you will come up, please.

17           MS. THOMPSON-HODGKINS: Thank you Mr. Martinez  
18 and welcome everyone to Washington D.C. I am so pleased  
19 to be the first presenter. To be able to talk about,  
20 well, what is a small project for EAC, but one that I  
21 hope will bring a lot of value to the election.

22           Just to briefly give you a little insight

1 into this project I remember the days back when I was a  
2 State Election Administrator being general counsel for  
3 the Department of Elections in Louisiana thinking it  
4 really would be nice to have one source to be able to  
5 go to take a look at all of the laws, all of the  
6 regulations, all of the cases country wide that dealt  
7 with elections.

8 I remember those days when you got frantic  
9 calls from the Legislature wanting to know how another  
10 state dealt with provisional voting or casting ballots  
11 or absentee voting or what have you and wishing I had a  
12 resource.

13 Actually at the Denver meeting I took a  
14 little poll of a few of you asking what you would think  
15 about EAC putting together this kind of resource. And  
16 it got some support. I brought it to the Commissioners  
17 and said, you know, hey what do you think about this?  
18 And they thought it was a good idea to.

19 So what we are doing is putting together a  
20 website to provide access for all of you, all the  
21 members of the public, to legal materials related to  
22 elections. It will provide you with up to date

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1 information, current statues, current cases, and in a  
2 format that is user friendly.

3 we decided to start this project with a

4 rather simple focus and that is State and Federal  
5 elections. Anything from State Constitutions, Federal  
6 Constitutions, Federal law, such as Help America Vote  
7 Act, and NVRA, The Voting Rights Act. Certainly the  
8 Voting Accessibility for the Elderly and Handicapped,  
9 ADA and the rehab act. Anything that we could think of  
10 either in the Federal or State arena in terms of  
11 Legislation that would impact the elections process.

12           We are also going to have State Statutes.  
13 Constitutions, Administrative Rules and Regs. They will  
14 be categorized by state and by topical area. So if  
15 you're interested in knowing how California deals with  
16 provisional voting you can go to California and take a  
17 look at Provisional Voting Statutes or cases. The same  
18 thing with voting equipment and various other  
19 categories.

20           However if you are looking for a broader  
21 search you will also be able to key in the terms that  
22 you're interested in finding and take a look across all

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1 of the States to see a sort of panorama of how that  
2 particular topic is dealt with.

3           As far as the cases are concerned we asked  
4 our contractor to summarize the cases for you at the  
5 beginning so that you didn't have to read the whole

6 case in order to determine whether or not it was  
7 something that really applied to your particular  
8 situation. You will also have a link to the full text  
9 of that decision. We started with a narrow focus and  
10 that is State and Federal elections particularly Help  
11 America Vote Act and the NVRA, and those issues which  
12 would be the most important to you guys as you are  
13 implementing HAVA.

14 As far as the time line is concerned on this  
15 project our contractor is just about finished  
16 identifying all of the resources that we need to be  
17 contained in the data base. They are in the process of  
18 summarizing those cases. And we will be populating that  
19 data base.

20 I am thrilled actually today to be able to  
21 give you a little bit of a preview of the data base. I  
22 hope you guys can see this. The text is a little small.

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1 But these are some screen shots that we have. And this  
2 a look into the actual key word search where you would  
3 be able to enter in for instance: "Cast Ballot". And  
4 pull up cases, statutes, regulations that deal with how  
5 various different states are casting ballots. You can  
6 also of course, as I told you before, search by  
7 category or by state. So there will be a browsing  
8 function there that you can go to those into a drop

9 down menu and choose from various different sources.

10 And this is sort of an example of what the  
11 results page would look like. The information that you  
12 will be needing.

13 We are very excited about this. I hope that  
14 you guys share the excitement and hope this will be a  
15 great resource for you. This is another little screen  
16 shot here of browsing a particular record for a single  
17 state.

18 If you have any questions, comments anything  
19 that I can answer right now I would be happy to take  
20 questions.

21 MS. LYNN BAILEY: (Georgia) when do you  
22 anticipate that project will be available for the

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1 public.

2 MS. THOMPSON-HODGKINS: I believe the tract  
3 that the contractor is on right now we should have this  
4 up by mid July. They are well into identifying all of  
5 the resources. There are quite a number of cases that  
6 they have summarized. But we try to ask them to do that  
7 on a priority bases, the newest cases first so that we  
8 can get that information out to you in that time frame.

9 BRAD CLARK: (California) will this be  
10 available to a regular EAC website? Will there be a be

11 a link to that legal resources.

12 MS. THOMPSON-HODGKINS: That is correct. There  
13 will be a link to Legal Resources Clearing House or  
14 Legal resources. You will be able to just go get that  
15 right off the EAC page.

16 The court Reporter has asked me to tell those  
17 who are speaking to identify yourselves so we will know  
18 who is speaking. Thank you so much for this opportunity  
19 to come and talk to you about this. I will be around  
20 for the next day and a half. So if any other questions  
21 come up with regard to Legal Resource Clearing House or  
22 in regard to anything else please do not hesitate to

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1 come and find me.

2 MR. MARTINEZ: I think Julie actually makes a  
3 good point at the end. And that is our staff will be  
4 around for the next couple of days. The presentations  
5 that you're hearing today at lunch are going to be kind  
6 of rushed because we are trying to get you as much  
7 information as we can. And we are starting with this  
8 lunch hour. But after the lunch hour the presentations  
9 that you will have will be issue specific. You will not  
10 not have four in a one hour block of time. There will  
11 be a time when you will get a ten or fifteen minute  
12 presentation with about thirty to forty minutes to ask  
13 questions on a particular issue.

14           So these are the ones we thought we could do  
15 rather quickly. But still even so we encourage you to  
16 ask to ask questions even if it means we need to  
17 readjust our agenda this afternoon.

18           Okay. Our next presenter-- I am going to ask  
19 Karen Lynn-Dyson who is our research manager. Karen  
20 manages all of our research agenda. And Karen, why  
21 don't you come on up to the microphone if you don't  
22 mind. And Karen will introduce our next presenter who

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1 will give a very a quick, brief, presentation. This  
2 project is on the work that we are doing to redesign or  
3 to offer more user friendly designs for various  
4 products that our presenter will explain to you. Karen  
5 come on up.

6           MS. KAREN LYNN-DYSON: I just want to  
7 reiterate what Commission Martinez said in terms of my  
8 availability to everyone here over the next couple of  
9 days. Am the individual responsible for oversight for  
10 all of the agencies research works and projects. I look  
11 forward very much to hearing from you all, your  
12 concerns, you issues, things you would like to see us  
13 addressing or addressing in more detail.

14           We have with us today Rick Grafe who is the  
15 CEO of the American Institute of Graphic Art. This



16 project which the Elections Assistance Commission is  
17 contracted for is one that Commissioner Martinez  
18 indicated where we are trying to provide to you all a  
19 series of best practices on ballot design and on  
20 signage. And with these best practices and these  
21 exhibits, if you will, of possibilities for approaches  
22 to ballot design and polling place signage we will take

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1 into consideration literacy, readability, usability  
2 alternate languages, braille, audio accessibility and  
3 ADA compliance.

4 The American Institute of Graphic Art is the  
5 professional association of design. It has some 17,000  
6 designers working in a variety of communication media.  
7 And they through their Design for Democracy which is  
8 their non profit affiliate can assist you all,  
9 government agencies, in finding national or local  
10 professional designers and researchers who can help you  
11 on a for hire basis to implement some of these designs.

12 So with that very brief introduction I am  
13 going to Mr. Grafe Korfe go ahead and describe to you  
14 all the work they have been doing for the EAC on this  
15 contract

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17 DESIGN FOR DEMOCRACY

18 MR. RICK KORFE:

19 All right. Thank you Karen. Again I am Rick  
20 Grafe sic) I want to thank you, Karen and also  
21 Commissioner Martinez. And I think some of the comments  
22 that he made are so very critical to what we want to

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1 share with you. That is he talked about the importance  
2 of best practices; he talked about the importance of  
3 research; and he talked about how critical input is.  
4 And I think all of those are reflected in what we are  
5 trying to share with you today.

6 This is going to be very brief. And one of  
7 the reasons it is going to be brief is that this isn't  
8 really about you listening to me it is really about our  
9 me listening to you.

10 Our project is effective design in election  
11 administration (sic) and as Karen pointed out Sign  
12 for Democracy is an initiative for AIGA which has been  
13 around since 1999.

14 It eventually focused on clear communication  
15 and more thoughtful experiences in public sphere so we  
16 can trust in government and increase citizen  
17 participation.

18 The specific project we are working on is  
19 aimed at building expertise, or building from our  
20 expertise, experience and new research to create models

21 for optical scan electronic ballots and also for  
22 polling place signage.

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1           Now the exhibits we actually created are  
2 under Tab five in your binders. And I mention that  
3 because I am going to do something that is a little  
4 unusual in talking about design. And that is I am not  
5 going to show you the designs because what we really  
6 want to do is gain your input. And there is an  
7 opportunity for you to look at the work under tab five  
8 and get a sense of it. And also in a room right across  
9 the hall we have two staff people, user specialists and  
10 researchers who are there to gain your input on various  
11 of the exhibits that are over there.

12           So during the next day, well actually two  
13 days, we will have the room, again, right across the  
14 hall. There is Elizabeth Hare, our Project Director and  
15 Mary Kwan who is our experienced strategist and  
16 usability specialist strategist. And they both will be  
17 over there looking for your input on some the exhibits.  
18 The exhibits are things like this. And while they are  
19 all drafts the intention is to get your reaction so we  
20 can refine them.

21           I want to mention now a couple of things  
22 quickly about designers and try to disavow you of

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1 certain preconceptions about about design. What we are  
2 talking about here is not people in flip flops and long  
3 pony tails who are trying to design this stuff. And we  
4 are not talking about arrogant artists wearing all  
5 black. What we are talking about are professionals who  
6 can take an experience and define and break it down  
7 into the small pieces that make an experience, like the  
8 voting experience, like the election experience and  
9 break it up into segments. And research how people  
10 react to information and then craft a solution.

11           So what we are really talking about is a  
12 process, a designing process, a way of thinking about a  
13 problem and the election process itself.

14           We broke it down into identification,  
15 orientation, instruction, action, is the voting part,  
16 completion. And what you do is you look at the election  
17 process and say what are all the pieces and how do  
18 people relate to that.

19           And out of that what we are going to do is we  
20 are going to propose to you guidelines that respect a  
21 number of issues, that respects a number of issues. It  
22 respects HAVA compliance; it will respect need to adapt

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1 materials for local applications; it will always to  
2 seek to find clarity and simplicity in what we are  
3 doing. And it will also reflect the need to respond to  
4 the technical requirements of voting equipment.

5           So right now our approach, and what happened  
6 to our project, right now our approach will deal with  
7 guidelines on the content, on what information is  
8 really needed by people at various stages.

9           You will deal with the voting system  
10 implication of course responding to the technical  
11 issues. It will deal with layout systems, the way  
12 people work through information. We know patterns that  
13 are most effective. And we will share those with you as  
14 well as issues of layout that reflect the needs of  
15 different technical systems. And also principles of  
16 design so that materials being adapted for the local  
17 level there are certain principles that you will know  
18 to follow.

19           what you see here are twelve stages in the  
20 design process. And I need to mention this again to  
21 point out that when you are dealing with a designer you  
22 shouldn't just expect them to design a ballot.

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1           You should deal with designers who are  
2 actually asking you more about the process of design.  
3 And the issues that are highlighted, five and six,  
4 gather information and develop prototype ideas is a  
5 stage that we are at. With that, that is an important  
6 stage.

7           We need to understand how people need, use  
8 information. What information is needed and then you  
9 develop prototypes which are like the draft examples  
10 you will see across the hall and then you gain greater  
11 information.

12           This is one case where when we talk about  
13 testing we are not testing to figure out how well we  
14 have done. We are testing to inform what we do. So the  
15 idea here is that we have materials for you to react to  
16 and it is your reaction that is as critical as it is to  
17 what we bring to the project.

18           I know that for many dealing with this issue  
19 isn't traumatic but it is a tough one because ballots  
20 have been developed over the years and they have  
21 accommodated a huge amount of information, a huge  
22 amount of requirements that are very local. And most

1 people in this room, and most people in most of the

2 elections systems, feel very strongly, they feel the  
3 issues we are confronting are unique. And they are  
4 concerned that all of the challenges they have already  
5 faced be accommodated in the outcome.

6           Let me assure you that that is exactly why we  
7 want to hear from you. Understanding what you bring  
8 about, what is important, is actually critical for us  
9 to be able to adapt to something that you can use  
10 effectively at the local level.

11           One of the advantages of the work we have  
12 done. One of the advantages of the work that we have  
13 done our election design project team has already  
14 worked with election officials in Cook County, Illinois  
15 and the state of Oregon. And so in terms of the  
16 testing process we have actually have not only the  
17 kinds of test that we do in order to perform research,  
18 to understand how people can best understand the issues  
19 and answer the ballot. But also we have had field  
20 testing and post election use. And we bring to the  
21 project here not only that experience but also certain  
22 things that are true of virtually any information

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1 design issue.

2           And our objective here is useful usable  
3 design. And our core team and what we bring to it,  
4 among other things, in addition to that experience, we

5 bring what we know from other research in terms of how  
6 people use information. And we know that there are  
7 certain principles that we will share with you that  
8 regardless of how your design evolves that you need to  
9 keep in mind and that is the design is not because it  
10 makes things look pretty but because it makes things  
11 useful. It makes things usable. They are effective.  
12 They are clear, they are simple.

13           These are things like using clear capital  
14 letters; not center lining type; keep the number of  
15 type variations down; understand information hierarchy;  
16 and using graphics to help illustrate points. We will  
17 share those things. And that's where we start.

18           Then we have our own panel of experts and  
19 project advisors that advise us and become part of that  
20 process of testing. Are we making the right conclusion  
21 when we are coming us with certain solutions?

22           And the next critical aspect is all of you.

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1 That's why we will be here for two days because we need  
2 to hear from you the issues that are most important to  
3 you and make sure we can accommodate them.

4           And then of course there are the voters as  
5 well. We look to them and their response in two ways.  
6 One is through putting together some test situations



7 with prototypical or typical voters in advance and also  
8 the outcomes of actual use.

9           The concept we are taking here is we want to  
10 create a design that is simple enough to address  
11 exceptional means. And by dealing with the needs at the  
12 extremes, the exceptional needs, and making something  
13 simple and clear for them we believe we will meet  
14 everyone's requirements.

15           So in this next round of testing that we do  
16 we are going to include people from 18 to 21 years of  
17 age, 65 to 80 and address the kind of issues that Karen  
18 pointed are the object of the issues and that is  
19 dealing with literacy issues, readability, usability,  
20 alternate languages, braille and audio accessibility  
21 and ADA compliance. And then in addition we will try to  
22 see what the requirements are for localization, for low

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1 experience levels and also for cultural obstacles.  
2 Ultimately again the outcome will be models that are  
3 other compliant, capable for local variability, easy to  
4 implement and sensitive to technical requirements.

5           The next stage will be some tests that we  
6 will do in the field, task based usability testing. We  
7 plan to do it on the east coast, midwest and west  
8 coast. And certainly if any of you want to be involved  
9 in this be sure to let Elizabeth or Mary know because

10 we have not selected sights yet. And the testing will  
11 be putting together, presumably, test labs and bring in  
12 volunteers to actually use the information.

13 I mention we will be in the room across the  
14 hall in the McPhearson Square Room, oh, I guess  
15 tomorrow is in the Board Room, it is not across the  
16 hall. So in the McPhearson Square Room, all day today  
17 until 6 o'clock. And tomorrow it will be in the Board  
18 room which is also on this level Board Room one I  
19 believe from 10 a.m., to 6 p.m. And you can also  
20 respond and even if it is not responding to what you  
21 see sharing with us your concerns.

22 Now what is this? We also want to get your

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1 feed back on line. But this is one of those slides from  
2 hell. You know you try to come up with a simple  
3 solution, especially for designers who talk about  
4 simplicity. You try to come up with a simple solution  
5 and you get a URL that no one can remember. So we will  
6 skip that. We are looking for a survey monkey to do  
7 another job.

8 Nest, you can use this link on the Home page  
9 of Design for Democracy.org./participate URL there is  
10 a link of that on line survey which is going to be  
11 available through the end of the month for any of your

12 comments on any materials in Tab 5. And again: Design  
13 for Democracy.org/participate. And that will be up for  
14 ten more days, until the end of the month to gather  
15 your comments.

16           There are the names of Mary and Elizabeth who  
17 we be here the next two says seeking your input. And we  
18 certainly welcome it in any way or form you choose to  
19 get it to us. But it is critical for us to hear from  
20 all of you on this in order to accommodate your needs.  
21 Thank you.

22           MR. MARTINEZ: Any questions on this

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1 particular presentation? Okay. Great thank you.

2           It occurs to me as I was listening to that  
3 presentation that perhaps this room could have been  
4 designed a little better for our meeting. Howard is  
5 that you behind the pillar? I think so. So our  
6 apologies for columns that are blocking the view, not  
7 that you want to see us up here anyway. But hopefully  
8 you can hear us back there, Howard.

9           What we want to do next, the final  
10 presentation both of this presentations on Public  
11 Access Portals and Spanish and Asian Language Working  
12 Groups that we have assembled will be presented by  
13 Edgardo Cortes who is one of our research specialists  
14 at the EAC. He will talk to you very quickly about

15 these issues and give you a chance to ask questions.

16 I also want to say about the previous  
17 presentation we reached our to Design for Democracy and  
18 to pull together best practices on ballot design and  
19 polling place signage et cetera. Based upon the input  
20 and urging from many of you out there we actually got a  
21 lot of feed back from, in particular, our Board of  
22 Advisors, upstairs, that this was a useful project for

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1 us to do with a lot of positive feedback from election  
2 officials who had worked with Design for Democracy. And  
3 we felt they were an important group to bring in. Have  
4 them do some templates and some best practice  
5 documents that we could put out for your consumption to  
6 see if you want to follow up with any of their work.  
7 And that is why you heard that presentation.

8 Okay. The following two presentations very  
9 quickly, Edgardo Cortes with the EAC staff:

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12 PUBLIC ACCESS PORTALS & SPANISH & ASIAN

13 LANGUAGE WORKING GROUPS .

14

15 MR. CORTES:

16 Thank you Mr. Vice Chairman. Give me just a

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17 minute to set this up.

18           Good afternoon, everyone, my name is Edgardo  
19 Cortes. I have been with EAC since late July of last  
20 year. Prior to that I used to run a National Voter  
21 Registration campaign that was funded by the government  
22 of Puerto Rico as well as did some political

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1 consulting work for a couple of campaigns around the  
2 country. Probably working with Peggy Sims dealing with  
3 all the requirement payments issues, the HAVA funding  
4 questions that come in, the College Board Approval  
5 Programs, any NVRA issues that come up and so anything  
6 I am Peggy's backup for that. So a lot of stuff you  
7 send in to us she and I work on getting your responses  
8 to.

9           First thing I am going to talk about is the  
10 Public Access Portal Project that we have been working  
11 on since last fall. We awarded a contract to  
12 Publius.org to conduct a study which will examine and  
13 create a best practices document about Public Access  
14 Portals.

15           Publius is a non partisan, non profit 501C3  
16 based out of Detroit Michigan. They have been in  
17 existence for about ten years now. And actually got  
18 their start setting up an information web site like  
19 this for the state of Michigan.

20           The methods up here is essentially from the  
21 research that is ongoing, it is kind of a color coded  
22 map as to what sorts of web sites by available by

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1 state. You can see some of them have state wide sites  
2 available. Some just have independent jurisdictions,  
3 half sites. Some are county based. And you can also see  
4 there are quite a few states that don't have anything  
5 set up so far. So those are kind of-- in terms of the  
6 research that is a visual representation of what they  
7 have looked at so far.

8           They have from September through December  
9 what they did was they went out and started doing an  
10 initial search of what web sites were out there and who  
11 is running them. And to this point they have identified  
12 and reviewed approximately 425 state, county and local  
13 web sites that provide information to voters.

14           of those 425 what they did was, starting in  
15 January, they started a more comprehensive look at a  
16 much smaller section of those, approximately fifty.  
17 what they have done is they are going in an ah, number  
18 one, going through the process of looking up  
19 information on the site, capturing what information is  
20 provided, how it is being provided all those sorts of  
21 things.

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1 interviews so far, finance reviews with the  
2 administrator that run these sites, with the IG folks.  
3 And what they have done in terms of those 50 sites they  
4 really went out and got a variety of state, county and  
5 local web sites to look at. They focused on urban and  
6 rural web sites, you know various that were urban and  
7 rural. They looked at as much geographic diversity as  
8 possible so that the Best Practices Document that comes  
9 out in the end will address some of the regional  
10 differences that might exist in terms of how  
11 information is presented. And will look at the  
12 differences throughout the states.

13           A couple facts about the web site. The  
14 actual first source of these informational web sites  
15 actually date back to around 1996, when the Internet,  
16 the use was not very wide spread yet. And so they  
17 really advanced a lot between then and now.

18           In terms of their initial research one of the  
19 things that they have found to be the most popular  
20 function-- when we went into this we really thought  
21 that the big questions were people wanting the check  
22 their registrations status, their voter registration

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1 status. And to know where their polling place was  
2 located.

3 That was one of the reasons we received this  
4 project, the kind of internal, initial research that we  
5 did to prepare to let this out a contractor indicated  
6 that those were the two big questions.

7 what we actually found is that aside from  
8 those, those are very important actually, but one of  
9 the things that draws people most to these sites are  
10 the sites that have candidate information and sample  
11 ballot information on the sites. which is something  
12 they are taking a look at in terms of what ways that  
13 can be readily presented to folks. And what they found  
14 is that sites that have the usage increases  
15 dramatically once that information goes up closer to  
16 election time. Once those sites put that information up  
17 the usage goes up.

18 Another interesting thing that we were able  
19 to take a look at this year, and it is going into the  
20 final report actually, is Louisiana set up a web site  
21 to provide voter information to displaced voters. Folks  
22 that were displaced after Hurricane Katrina. And they



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1 set up this web site so that those folks, prior to the  
2 special election in New Orleans, would be able to, from  
3 anywhere in the country, go in and access not only the  
4 information of, you know, the dates and everything,  
5 but were able to get information on the absentee ballot  
6 process, were able to down load applications for  
7 absentee ballots and really provided a lot of  
8 information and was kept up to date. So Publius was  
9 actually able to, because of the timing of our project  
10 was actually able to look at from beginning to end this  
11 process and has spoken with folks in Louisiana about  
12 it. And that is one of the things we will be dealing  
13 with in the final report which we might be able to use  
14 in the future for other studies as well.

15           One of the things that may or may not  
16 surprise you is that number one there is a lot of  
17 interest at all levels for providing these sites. It is  
18 has really been an issue of resources up until now as  
19 to whether or not jurisdictions provide these sites and  
20 how advanced they are.

21           One of the things through the phone calls and  
22 interviews that they have done with existing sites is a

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1 lot of the smaller jurisdictions and the counties have  
2 been kind of stalling further development of these  
3 sites because there is a lot of concern out there about  
4 how the switch to a statewide voter registration list  
5 is going to impact states providing this information  
6 whether or not it is going to be done at a state level.  
7 And kind of remove the need for them to have it at the  
8 local level. So that is one of the concerns that has  
9 come up during the research as well.

10           One thing that shouldn't surprise anybody is  
11 there is no one promotion strategy for these sites that  
12 works. Every location that has them is different as to  
13 how they get the word out about them and how they draw  
14 people to those sites.

15           In terms of timing, just go give everybody an  
16 idea, they have been doing this research for a while  
17 now. They are hoping to-- we are hoping to have the  
18 draft document ready by mid to late summer. So July or  
19 August we are hoping to have a draft document available  
20 which we will-- I will work with the Commissioner to  
21 make sure that we are able to distribute that to both  
22 the Standards Board and the Board of Advisors for

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1 people to be able to look at it, give their feed back  
2 before it goes into the final version which we hope if

3 we can get the draft in mid Summer and we are hoping  
4 that sometime in the early Fall we will be able to have  
5 a final document out there.

6           In terms of the time line we realize it is an  
7 election year. We realize this information is going out  
8 in the Fall. One of the things that we realized early  
9 on was that even last Fall it was to the point where it  
10 was pretty much too late for states and jurisdictions to  
11 implement the suggestions that were going to come out of  
12 this in time to impact this year's elections. So what  
13 we are really hoping to get out of this document is  
14 that it will be available toward the end of this cycle  
15 so that once we get into next year and people start  
16 looking toward the '08 Presidential elections. And we  
17 have gotten past the HAVA deadlines and everybody's  
18 attention starts to shift this information will be out  
19 there so that states, and counties and local  
20 jurisdictions can take the information in here and be  
21 able to implement these sites with enough time to make  
22 them functional and work out all the bugs and

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1 everything before we move into the election year. So  
2 that's what we are looking at in terms of time lines  
3 for this project.

4           I will take questions about both of these  
5 after I finish the second topic

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SPANISH AND ASIAN LANGUAGES WORKING GROUPS.

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9 Many of you know there have been a lot demographic  
10 changes in the country and a lot of-- particularly in  
11 the past decade there is a lot of jurisdictions that  
12 have sizeable populations that fall under Section 203  
13 of Voting Rights Act, or who will soon be, and a lot  
14 jurisdictions. And lot of jurisdictions that didn't  
15 before now have to provide information in alternative  
16 languages.

17

          We have seen it and we realize the issues  
18 that come up in terms of jurisdictions that have never  
19 dealt with alternative languages or to some of the  
20 issues that come up and how can they implement this  
21 properly.

22

          Prior to my getting here the work had already

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1 started on these projects. It was decided by the  
2 Commission that we should-- really what we should do is  
3 to bring together some working groups that consist of  
4 election administrators, advocacy organizations,  
5 different people that deal with the issues that come up  
6 and deal with them first hand and let us know what sort  
7 of research we can conduct that will help you in that

8 process.

9 HAVA section 241, which is the section that  
10 talks about the studies of election administrations one  
11 of the things that it charges the EAC to do is conduct  
12 research on making information most convenient,  
13 accessible and easy to use for voters including voters  
14 with limited proficiency in the English language. So  
15 that is actually in HAVA. And one of our mandates is to  
16 go out there and find information to make it easier to  
17 provide or to administer elections using alternative  
18 languages.

19 The way we started out was last August we had  
20 the first meeting of the Spanish language working  
21 group. We had that at the EAC offices. And the reason  
22 we chose to deal with the Spanish language first is

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1 number one it is largest alternative language that  
2 folks are dealing with. Most of the-- the majority of  
3 jurisdictions out there that deal with alternative  
4 languages have been dealing with Spanish. And that  
5 really has been because of the growing population size  
6 it has been an issue that a lot of knew jurisdictions  
7 have had to deal with. So we wanted to bring that group  
8 together and see what sort of things we could do. That  
9 was in early August.

10 The next group we decided to bring together  
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11 was a group to discuss access to different Asian  
12 languages. Under Section 203 of the Voting Rights Act  
13 there are actually five Asian languages, Asian and  
14 Pacific Islander languages that are covered and that  
15 certain jurisdictions have to provide information in  
16 those languages. That is Chinese, Japanese, Korean,  
17 Vietnamese and Tadolwin (sic). So that working group we  
18 actually had at the end of April, so just about a month  
19 ago we brought that group together.

20           we are looking toward the future, hopefully  
21 sometime next year to be able to bring together a  
22 working group dealing with native American languages.

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1 And that one is going to be really interesting because  
2 with a lot of languages we are talking about languages  
3 that have no written form, they are all spoken  
4 languages. And so that presents a whole additional set  
5 of issues when you're talking about administering  
6 elections and providing information in an alternative  
7 language that you can't write.

8           So basically what all three of these groups  
9 are meant to do is provide the EAC with, or help us in  
10 accessing what sort of language specific projects we  
11 can conduct as an agency.

12           Some of the things that have already come up

13 and that we are actually are working towards is number  
14 one creating translation dictionaries of election  
15 terminology to have a document that would provide a  
16 whole list of election terms and provide a translation  
17 from English to whatever the alternative language is.  
18 The first one we are working on is actually English to  
19 Spanish. And so we are also looking towards doing the  
20 five Asian languages.

21           And one of the biggest complaints we have  
22 gotten in terms of, and I am sure you have all heard,

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1 in terms of trying to provide this information is that  
2 the translation services that are out there aren't  
3 always the best. And when election information gets  
4 translated a lot of time it is a literal translation  
5 and the meaning is really lost when you translate it to  
6 the other language.

7           So we are hoping by providing this tool for  
8 election administrators it can help you all meet the  
9 needs of the communities that you are serving, and the  
10 electorate that you serve.

11           The other project that we actually are  
12 working and we hope to have ready by mid summer is  
13 providing a translation of the National Voter  
14 Registration form. We have the Spanish language  
15 version, the updated one already up on our website.

16 Both the English and the Spanish were recently updated.  
17 But the form hasn't been translated into the five Asian  
18 languages since the FEC first created the initial voter  
19 registration form. So it has been quite a while. And we  
20 are hoping to get that done fairly quickly so that  
21 those jurisdiction can have voter registration forms  
22 available in those languages later this year.

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1           And then finally we are-- one of the roles of  
2 these groups is to provide us not only with the feed  
3 back but to help us prioritize. I mean there is all  
4 these questions all the time for different research  
5 projects that you all think would be useful. And by  
6 bringing these groups together we are hoping to  
7 establish some sort of priority for what we can do  
8 short term to get some immediate assistance out there  
9 and then look at what we can do long term in terms of  
10 these issues.

11           So that is pretty much what the language  
12 groups are doing. So I can take some questions.

13           MR. MARTINEZ: We can move very quickly for  
14 some questions or comments from anybody out there? Any  
15 questions or comments about Public Access Portals or  
16 the working groups we have assembled, Secretary  
17 Kidmeyer.



18 SECRETARY KIDMEYER: A question in regards to  
19 dialects how do you handle dialects even though it is  
20 the same language?

21 MR. CORTES: That is actually one of the  
22 things we spent a lot of time on actually during both

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1 working groups. The Spanish language translations are  
2 the first ones we are working on so I can tell you a  
3 little bit about how we are going to handle that.

4 One of the suggestions we had was to bring  
5 together a group of language experts, academics to  
6 review the work we are doing in terms of translation.  
7 But the other thing that we are doing is we are going  
8 to look at what the regional differences are and  
9 provide alternative terms to reference the same thing.

10 For instance the word ballot is translated  
11 into Spanish is different if you go to Florida if you  
12 go to New York , if you go to California. They all use  
13 different terms for that. In the instances were we can  
14 provide some sort of standard translation term that  
15 everybody understands or alternatively for those were  
16 that doesn't exist to provide, you know, multiples  
17 translations so that depending on where you're at you  
18 can look and see what sort of populations you are  
19 coming from.

20 A lot has to do with country of origin. So

21 providing that information you will be able to go to  
22 the list and say well my jurisdiction has a very large

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1 Puerto Rican population this is probably the  
2 translation form I should use.

3 MR. MARTINEZ: Other questions please? Yes,  
4 John.

5 JOHN LINDBACK: It is a really basic  
6 question. I don't understand the difference between a  
7 Public Access Portal and conventional website. Because  
8 we have had a ton of information out there on a  
9 conventional website. When you talk Public Access  
10 Portals what do you mean exactly?

11 MR. CORTES: It is essentially a voter  
12 information website. And what they are looking at is a  
13 website where you can go in and get information as far  
14 as registration status. It is a polling state  
15 locations, candidate information, all those very  
16 specific election information.

17 We do realize that most states do have basic  
18 sites, whether it is the Chief Election Officer or the  
19 local jurisdictions that have polling place hours and  
20 those things. We are really looking at sites that open  
21 further and are more interactive in terms of the  
22 information that people can pull from them.

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1           MR. MARTINEZ: And some states, I think, have  
2 more experience in putting forth what is regarded as  
3 Public Access Portals. I am looking at Sarah Ball  
4 Johnson who is right next to you because I think  
5 Kentucky is one of the states that has been something  
6 like this for a while. She is whispering to you right  
7 now.

8           I broke my own rule. When you raises your  
9 hand to speak if you can introduce yourself, state your  
10 name for the court reporter. And I apologize, Secretary  
11 Mary Kiffmeyer and John Lindback from Oregon. Mary  
12 Kiffmeyer from Minnesota.

13           Any other questions or comments on anything  
14 that was presented, please.

15           Okay. Edgardo, thank you very much. I  
16 appreciate your work.

17           Again as a quick background what we are  
18 presenting to you over the next day and a half, and  
19 what we just started with the first four presentations  
20 are research projects that are grounded in some place  
21 in our government statute, within HAVA.

22           We are either wearing a hat of producing a

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1 national clearing house of best practices; or we are  
2 wearing a hat of having to produce voluntary guidance  
3 to help clarify title free requirements. So there are  
4 different hats that the EAC will wear statutorily that  
5 when we wear the hat we want to wear it in the manner  
6 that is consistent with the advice that we get from our  
7 statutory boards, and that is you.

8           Again what we do proactively is to try to  
9 reach out to all of you, as many as we can  
10 individually, throughout the course of our fiscal year,  
11 asking you to participate in working groups, many of  
12 you have done so, seeking your advice through our  
13 fiscal year. We have a chance to get you all in one  
14 room once or twice a year to put it all in front of you  
15 and solicit your candid feedback.

16           So again I encourage your questions. And it  
17 doesn't have to happen in this hour. We can continue  
18 this conversation throughout the duration of the next  
19 day and a half I am going to turn the mic over, after  
20 the break, to your Executive Board and they will  
21 commence the official gavel of your Standards Board  
22 Meeting. So thank you very much for being here once.

1 Thank you for what I know will be a productive day and  
2 a half. The four Commissioners will be in and out  
3 because we have the Board of Advisors going on  
4 simultaneously two floors above you we will be  
5 alternating in and out. But all four Commissioners will  
6 be around for the next couple of days. We look forward,  
7 I certainly look forward to engaging in conversation  
8 both with the body collectively and all of you  
9 individually.

10 So with that Madam Chair, I have 1:25 if you  
11 want to allow for a ten break we can just go five  
12 minutes off your schedule. I have 1:25 if we can  
13 reassemble at 1:35. Thank you very much.

14 ( Recess from 1:25 to 1:45 P.M.)

15 MS. NIGHTSWONGER: Okay. Commission Martinez  
16 has already welcomes you and I would also like to  
17 welcome you to our meeting here of the National  
18 Standards Board. And I am only here because Mike left  
19 us. He had the nerve to go out on us. And you all  
20 probably got that email about him getting a new  
21 fantastic job. So he kind of left me hanging out here.  
22 So all of you are going to have to be very patient with

1 me today and tomorrow and please don't throw tomatoes  
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2 at me from the crowd. I will try to get someone up here  
3 in a few minutes to help keep me in line.

4           Before we begin to day I guess I should call  
5 this meeting to order first of all. I don't have a  
6 gavel. I don't know if Adam took it or what happened. I  
7 would like to just talk about a couple of ground  
8 rules that I'd like to put in place here and that is  
9 for our Court Reporter here is going to be taking the  
10 minutes, the official minutes of this meeting so we  
11 really do need to speak in a microphone when we go to  
12 the floor. And we are going to have some roving mics  
13 so that you don't always have to get out of your seat.  
14 So if you will raise your hand I will call on you and  
15 the people carrying the mic will get a microphone to  
16 you. And I would like you to address the group with  
17 your name and where you are from please. And then you  
18 can give your question or whatever. So if you can just  
19 try to do that. That way we will know who is talking  
20 and what they are saying and we can hear very well.

21           The first thing we need to do is call the  
22 role. So I would like to have Bill Campbell if you

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1 would go ahead and do that. If you would respond when  
2 he call your name so we can make sure we have a quorum  
3 at this meeting.

4 MR. CAMPBELL: I will read the state name and  
5 then the members.  
6 Alabama, Nancy Worley.  
7 MS. WORLEY: Here.  
8 MR. CAMPBELL: Luke Cooley (no response).  
9 Alaska, Whitney Brewster.  
10 MS. BREWSTER: Here.  
11 MR. CAMPBELL: Shelly Crowden?  
12 MS. CROWDEN: Here.  
13 MR. CAMPBELL: American Samoa? Soliai T.  
14 Fuimaono?  
15 MR. FUIMAONO: Here.  
16 MR. CAMPBELL: FILIVAA MAGEO? (No response).  
17 MR. CAMPBELL: Arizona? Kevin Tyne.  
18 MR. TYNE: Here.  
19 MR. CAMPBELL: Mitch Etter?  
20 MR. ETTER: Here.  
21 MR. CAMPBELL: Arkansas, Charlie Daniels? (No  
22 response) .

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1 MR. CAMPBELL: Mary Lou Slinkard?  
2 MS SLINKARD: Here.  
3 MR. CAMPBELL: California, Brad Clark?  
4 MR. CLARK: Here.  
5 MR. CAMPBELL: Coney McCormack? (no response).  
6 MR. CAMPBELL: Colorado, Gigi Dennis (no  
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7 response).  
8 MR. CAMPBELL: Russ Ragsdale? (No response).  
9 Connecticut. Michael Kozik? (No response).  
10 Sandra Hutton? (No response).  
11 Delaware, Frank Calio? (no response).  
12 Howard Sholl?  
13 MR. SHOLL: Present.  
14 MR. CAMPBELL: District of Columbia, Alice  
15 Miller?  
16 MS. MILLER: Here.  
17 MR. CAMPBELL: Jonda McFarlane? (no response)  
18 Florida; Dawn Kimmel Roberts?  
19 MS. ROBERTS: Here.  
20 MR. CAMPBELL: Bill Cowles?  
21 MR. COWLES: Here.  
22 MR. CAMPBELL: Georgia, Kathy Rogers (No

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1 response) Lynn Bailey?  
2 MS. BAILEY: Here.  
3 MR. CAMPBELL: Guam, Gerald Taitano?  
4 MR. TAITANO: Here.  
5 MR. CAMPBELL: Hawaii, Scott Nago?  
6 MR. NAGO: Here.  
7 MR. CAMPBELL: Glenn Takahashi?  
8 MR. TAKAHASKI: Here.



9 MR. CAMPBELL: Idaho. Timothy Hurst? (no  
10 response) Dan English? (no response).  
11 Illinois, Daniel W, White?  
12 MR. WHITE: Here.  
13 MR. CAMPBELL: Richard Cowen? (No response)  
14 Indiana, Todd Rolita?  
15 MR. ROKITA: Here.  
16 MR. CAMPBELL: The Honorable Shannon  
17 Weisheit?  
18 MS SHANNON WEISHEIT: Here.  
19 MR. CAMPBELL: Iowa, Chet Culver? (No  
20 response) Renee McClellan? (No response).  
21 Kansas Ron Thornburgh? (No response).  
22 Donald Merriman? (no response).

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1 Kentucky. Sarah Ball Johnson?  
2 MS. JOHNSON: Here.  
3 MR. CAMPBELL: Don Blevins?  
4 MR. BLEVINS: Here.  
5 MR. CAMPBELL: Louisiana, Marietta Spencer  
6 Norton? (No response).  
7 Louie Bernard?  
8 MR. BERNARD: Here.  
9 MR. CAMPBELL: Maine, Julie Flynn?  
10 MS. FLYNN: Here.  
11 MR. CAMPBELL: Clairma Matherne?  
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12 MS. MATHERNE: Here.  
13 MR. CAMPBELL: Maryland, Linda H. Lamone? (No  
14 response).  
15 Kim A. Atkins? (No response).  
16 Massachusetts, William Francis Calvin? (No  
17 response) William.  
18 MR. CAMPBELL: I am here.  
19 Michigan, Thomas Luitje?  
20 MR. LUITJE: Here.  
21 MR. CAMPBELL: Tony Bartholomew?  
22 MR. BARTHOLOMEW: Here.

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1 MR. CAMPBELL: Minnesota, Mary Kiffmeyer?  
2 MS. KIFFMEYER: Present.  
3 MR. CAMPBELL: Sharon Anderson?  
4 MS. ANDERSON: Here.  
5 MR. CAMPBELL: Mississippi, Jay Eads? (No  
6 response) Marilyn Avery? (No response).  
7 Missouri, Leslye Winslow?  
8 MS. WINSLOW: Here.  
9 MR. CAMPBELL: Richard T. Struckhoff?  
10 MR. STRUCKHOFF: Here.  
11 MR. CAMPBELL: Montana, Elaine Gravely? (No  
12 response) Vickie Zeier?  
13 MS. ZEIER: Here.

14 MR. CAMPBELL: Nebraska, John Gale? (no  
 15 response) Roberta Zoucha? (No response).  
 16 Nevada, Dean Heller? (No response).  
 17 Harvard L. Lomax?  
 18 MR. LOMAX: Here.  
 19 MR. CAMPBELL: New Hampshire, Anthony Stevens?  
 20 MR. STEVENS: Here.  
 21 MR. CAMPBELL: Carol Johnson?  
 22 MS. JOHNSON: Here.

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1 MR. CAMPBELL: New Jersey, Maria Delcoch?  
 2 MS. DELCOCH: Here.  
 3 MR. CAMPBELL: Joanne Ambruster?  
 4 MS. AMBRUSTER: Here.  
 5 MR. CAMPBELL: New Mexico, Rebecca  
 6 Vigil-Geron?  
 7 MS. VIGIL-GERON: Here.  
 8 MR. CAMPBELL: David Kunko? (no response)  
 9 New York, John Haggerty?  
 10 MR. HAGGERTY: Here.  
 11 MR. CAMPBELL: Edward Szczesniak?  
 12 MR. SZCZESNIAK: Here.  
 13 MR. CAMPBELL: North Carolina, Johnnie  
 14 McLean?  
 15 MS. MCLEAN: Here.  
 16 MR. CAMPBELL: Kathie Cooper? (No response)

17 North Dakota, James Silrum?  
18 MR. SILRUM: Here.  
19 MR. CAMPBELL: Michael M. Montplairer?  
20 MR. MONTPLAISER: Here.  
21 MR. CAMPBELL: Ohio, J.Kenneth Blackwell?  
22 (no response).

0

1 Steve Harsman?  
2 MR. HARSMAN: Here.  
3 MR. CAMPBELL: Oklahoma, Clint Parr? (No  
4 response).  
5 Oregon, Jack Lindback?  
6 MR. LINDBACK: Here.  
7 MR. CAMPBELL: John Kauffman?  
8 MR. KAUFFMAN: Here.  
9 MR. CAMPBELL: Pennsylvania, Pedro Cortes?  
10 (No response) Regis Young?  
11 MR. YOUNG: Present.  
12 MR. CAMPBELL: Puerto Rico, Nester J. Colon  
13 Berlingeri? (No response).  
14 Juan M. Toledo-Diaz?  
15 MR. TOLEDO-DIAZ: Here.  
16 MR. CAMPBELL: Rhode Island, Jan Ruggiero?  
17 (no response).  
18 Marian Clarke? (no response).

- 19 South Carolina, Marci Andino? (No response)  
20 Marilyn Bowers?  
21 MS. BOWERS: Here.  
22 MR. CAMPBELL: South Dakota, Kea Warne.

55

- 1 MS. WARNE: Here.  
2 MR. CAMPBELL: Sue Roust?  
3 MS. ROUST: Here.  
4 MR. CAMPBELL: Tennessee, Brook Thompson? (No  
5 response) Joe Enock? (No response).  
6 Texas, Trey Trainor?  
7 MR. TRAINER: Here.  
8 MR. CAMPBELL: Dana DeBeauvoir?  
9 MS. DeBEAUVOIR: Here.  
10 MR. CAMPBELL: Utah, Michael Cragun?  
11 MR. CRAGUN: Here.  
12 MR. CAMPBELL: Robert Pero?  
13 MR. PERO: Here.  
14 MR. CAMPBELL: Vermont, Deborah Markowitz?  
15 MS. MARKOWITZ: Here.  
16 MR. CAMPBELL: Arnette Cappy? (No response).  
17 MR. CAMPBELL: Virginia, Jean Jansen?  
18 MS. JANSEN: Here.  
19 MR. CAMPBELL: Allan Harrison, Jr.?  
20 MR. ALLAN HARRISON, JR.: Here.  
21 MR. CAMPBELL: Virgin Islands, Corinna  
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22 Halyyard Plaskett?

□

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1 MS. PLASKETT: Here.  
2 MR. CAMPBELL: Natalie Thomas?  
3 MS. THOMAS: Here.  
4 MR. CAMPBELL: Washington, Paul Miller?  
5 MR. MILLER: Here.  
6 MR. CAMPBELL: Bob Terwilliger?  
7 MR. TERWILLIGER: Here.  
8 MR. CAMPBELL: West Virginia, Benjamin  
9 Beakes? (No response).  
10 Gary Williams? (No response) .  
11 Wisconsin, Kevin Kennedy?  
12 MR. KENNEDY: Here.  
13 MR. CAMPBELL: Sandra L. Wesolowski?  
14 MS. WESOLOWSKI: Here.  
15 MR. CAMPBELL: Wyoming, Peggy Nightswonger?  
16 MS. NIGHTSWONGER: Present.  
17 MR. CAMPBELL: Julie Freese?  
18 MS. FREESE: Here  
19 .  
20 MS. NIGHTSWONGER I believe we need 56  
21 members for a quorum, so we will figure this out.  
22 MR. CAMPBELL: Is there anyone that did not

□

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1 respond to the roll call?

2 MS. NIGHTSWONGER: Okay. We have a sufficient  
3 number of members to conduct business. We will move  
4 ahead.

5 Before we get started here with some other  
6 things on the agenda I would like to introduce the  
7 Executive Board if I could. Probably most of you know  
8 who they are but I'd like them to stand so you can make  
9 sure you know what their face looks like in case you  
10 want to bombard them with a problem or an issue that  
11 you're having.

12 Actually is the room okay? I want to ask  
13 that. Is anyone too hot or too cold or do we care that  
14 they are uncomfortable?

15 So if I could just have you stand when I call  
16 your name. First of all Indiana Secretary of State Todd  
17 Rokita. And Vermont's Secretary of State Deborah  
18 Markowitz. Oregon Director of Elections John Lindback.  
19 Kentucky Executive Director Sarah Ball Johnson. City  
20 Clerk of Woburn, Massachusetts Bill Campbell who is up  
21 here with me. And Clark County Registrar of Voters,  
22 Harvard Lomax. And last but not least, even though he

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1 came last Natchitoches Clerk of the Court, Louie  
2 Bernard. And Louie do you want to come up. You have  
3 something to say. I am almost afraid to call him to the  
4 table. So that's your Executive Board. And I really  
5 appreciate all of them and the help they haven given  
6 me. Now you know what they look like in case you have  
7 forgotten since Denver.

8 MR. BERNARD: I was asked to be the chaperon  
9 for the Executive Board when we were first elected. I  
10 was not here last night. I have nothing to do with last  
11 night. I don't know what they did and I don't want to  
12 know what they did.

13 It is very good to see all of you. I couldn't  
14 come in until this morning. Beverly Kauffman and I flew  
15 up together from Houston. We just happened to meet up,  
16 it is good to be here and see all these familiar faces  
17 again.

18 As most of you know Ray Martinez has  
19 announced that he will be leaving the EAC in June. I am  
20 personally very pleased about that because anyone who  
21 has worked with Ray, you know how pushy he can be  
22 (laughter). For almost two years we all have had the

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1 honor and privilege to work with this tireless and  
2 selfless man. And we all better people for and a better  
3 EAC for him having come our way.

4 I don't know about you, I sense in this  
5 country a partisanship that almost strangles everything  
6 we try to do. Our Commissioner since the day I came in  
7 here at the meeting in Houston. I've always been amazed  
8 how they seem to get along and work together with one  
9 another. I have no doubt that behind closed doors when  
10 we go home they may holler and scream but there is an  
11 outward appearance that lets try to respect each other  
12 and accomplish something for the entire  
13 group. And I think that is a good thing to do.

14 Ray Martinez has been at the heart of all  
15 that is positive, that has happened with EAC in this  
16 relatively short period of time.

17 He is one of the four, what I call one of the  
18 four T-Rex's at the EAC but the endearing quality  
19 about Ray is that he doesn't know he is one of those.  
20 He is a man of great humility. He is a man of great  
21 sincerity and he is someone more than anything else  
22 respects someone's point of view.

□

1 where I come from the nicest thing that can  
2 be said about a man is that he is truly a gentleman.

3 And I think without question, despite if you agree with  
4 everything that Ray has said or done, that Ray Martinez  
5 is truly a gentleman.

6 Ray, the Executive Board and the Standards  
7 Board would like to wish the very best in all that  
8 comes down your way in the future we want to give to  
9 you our heartfelt appreciation for all you have done  
10 for us.

11 I think it would be a shame for anybody to be  
12 a part of any organization and leave without being able  
13 to say they made a difference. I don't think Ray  
14 Martinez has anything to worry about when it comes to  
15 having made a difference at the EAC.

16 So I will close it by allowing Peggy to  
17 present this plaque. And Ray I just want to tell you  
18 that on behalf of all of us it is not an original  
19 blessing but it is something that I feel is very  
20 appropriate as you leave, the old Irish blessing, we  
21 would all say to you:

22 "May the Road rise to meet you.

□

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1 May the wind be always at your back.  
2 May the sun shine warm upon your face.  
3 May the rain fall softly upon your fields.  
4 And until we all meet again may the Lord.

5 Hold you in the palm of His hand."

6

7 Ray, would you come forward you. (Applause).

8 Presented to Ray Martinez III for selfless

9 and exemplary service to the Elections Assistance

10 Standards Board, our heartfelt thanks for going the

11 extra mile for America's voters this 23rd day of May

12 2006, by a very appreciative Executive Board.

13 MR. MARTINEZ: Thank you very much. I am

14 going to get out of your way quickly. I can not thank

15 you, Louie, for the wonderful words and my thanks to

16 all of the members of the Executive Board. I have had

17 the distinct privilege of working very closely now for

18 the past year that I feel like I am a close friend with

19 each and every one of them for a very long time now. I

20 am so appreciative.

21 And you know I am still the Commissioner for

22 at least a few more weeks and I am going to savor every

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1 moment of it because has been truly for me the most

2 fulfilling professional experience in my life.

3 In my household growing up in south Texas

4 public service meant something. And I am proud to say

5 to my family and all my friends that I have tried to

6 fulfill that. So I thank you very much. It is with

7 genuine sincerity it has been a privilege for me, a

8 real privilege and honor, to work with all of you. So  
9 thank you very much now get to work.

10 (Applause).

11 MS. NIGH SWONGER: Thank you Commissioner.

12 The first order of business is we need to  
13 a appoint a Parliamentarian. And Julie has been so kind  
14 to do that for us in the past. She too has left us. I  
15 don't know what is going on here. Everyone is leaving  
16 us.

17 So I would like to open this up. I am sure  
18 many of you are Parliamentarians and would love the  
19 opportunity to sit up here beside me and keep me in  
20 line. So is there anyone who would like to do that  
21 today? Don't be shy. We know who you are. Some on.  
22 Nobody? Lou, what do you think.

□

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1 MR. BERNARD: I think they are being shy.

2 I know there is someone out there who can do  
3 it. You don't want me.

4 MS. NIGH SWONGER: Anybody? I really do need  
5 help, honest. Secretary Kiffmeyer, oops she is still  
6 deciding here. Thank you so much for volunteering, if  
7 you will come up and take the seat on my left. Are you  
8 right handed.

9 MS. KIFFMEYER: Either hand will do.

10 MS. NIGH SWONGER: Thank you so much.

11 The next thing on our agenda here, and I  
12 think all of you got an agenda I hope. They were in  
13 your books. If you need an agenda please raise your  
14 hand we can get you one for today's meeting. As we look  
15 down over the agenda we are going to do a little bit of  
16 Board business here. And then following that we will  
17 move into some presentations from the EAC.

18 If we can move ahead with the agenda the  
19 chair will entertain a motion to adopt the agenda if we  
20 could first.

21 MS. BARTHOLOMEW: I so move.

22 MS. NIGH SWONGER: All in favor?

□

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1 ( Aye).

2 MS. NIGH SWONGER: Opposed? I hear no opposed,  
3 okay. The Aye's have it and we have an agenda.

4 As for the minutes in your book, behind Tab 4  
5 I believe it is we have a synthesis of the Denver  
6 meeting. I don't know about you but I probably would  
7 like to look over those a little bit. And I was  
8 wondering if we can postpone talking about the minutes  
9 until tomorrow sometime. That would give you tonight  
10 to look over the minutes of the synthesis of what was  
11 done in the Denver meeting.

12 I think that would be better. There is quite

13 a lot for you to read after just picking up your books.  
14 So we will postpone that on the agenda until tomorrow  
15 that would work better.

16           Okay. You all have your books. And I think  
17 the books are pretty self explanatory. Everything is  
18 tabbed and put together very nicely. So we will be  
19 working from the agenda. As you notice all of the  
20 presenters have information in our books. And you will  
21 find them behind the tabs as indicated in your book.

22           Right now we do have some discussion about

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1 our bylaws when we were in Denver last year as many of  
2 you probably remember. And we actually adopted our  
3 bylaws when we were in Denver. But I am going to ask  
4 Kevin Kennedy if he would come up. Kevin worked on the  
5 original bylaws committee, or whatever that committee  
6 was called, when we were trying to establish bylaws.  
7 And I would like him to give us a brief presentation on  
8 sort of what is going on and the history.

9           I know many of you are new to our Board  
10 because someone has left and you have been appointed  
11 to this position and you may not even know some of the  
12 things that have gone on in the past. So Kevin if you  
13 would just give us a brief presentation about that I  
14 would appreciate it.

15 MR. KENNEDY: Thank you. First I would like  
16 to welcome Peggy to this new position. And challenge her  
17 during the course of this meeting to pronounce the name  
18 of the New Mexico Secretary of State and the Travis  
19 County clerk (laughter).

20 MS. NIGH SWONGER: I have been working at it.

21 MR. KENNEDY: The minutes-- I'm sorry. The  
22 bylaws are set up behind Tab 2. And as Peggy said were

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1 adopted at the last meeting. The minutes provide a  
2 very good summary of the fact that we had three motions  
3 to change those bylaws. All three of those bylaws  
4 failed. So what you see in front of you are the bylaws.

5 I would like to draw your attention to a few  
6 sections of that so that your familiar with it because  
7 as a new organization. I think this tells you how we  
8 are going to operate. It is a point of reference.

9 One of the motions that failed dealt with  
10 Section 23 on authority, page one on how to treat non  
11 partisan members of the Commission of the Standards  
12 Board.

13 I'd also want to make sure you are familiar  
14 with the Procedures of Nominating of new members of the  
15 Board, members of the Executive Board that are set out  
16 on page 2 of the materials under Section 4.

17 Section C of the bylaws themselves, the  
Page 60

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18 Chair, on page 3 certain duties of a client, we have  
19 two standing committees according to the bylaws. One is  
20 a nominating committee. So there will be some action on  
21 that towards the end of the year. And our President  
22 will appoint a Chair for that committee and the Board

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1 will find members.

2           The same is true of the bylaws committee. A  
3 Chair will be appointed in the interim. And committee  
4 members will volunteer for that. That is in Section 4F,  
5 on page 3.

6           The final thing we had some questions that  
7 failed at the last meeting dealing on how we establish  
8 quorum. And whether or not we use proxy votes. And if  
9 you look at Section 5-- I'm sorry, Section 6 on page 8  
10 it describes the voting procedures.

11           Section 7 proposes how we handle the actual  
12 bylaws for the committee. And with Section 7 I will  
13 point out the committee wants us to establish and be  
14 charged with developing a forum. My experience of  
15 working with this group in the last year in putting a  
16 these bylaws together is that there is no shortness of  
17 ideas on how to come up with rules and regulations. One  
18 of the proposals is there will be a sample form so that  
19 we can have a very orderly process in doing this.



20 I think it is very important for all of the  
21 members to take the time to review the materials that  
22 are on pages one through ten before the next meeting,

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1 if you have ideas on changes to the bylaws. In terms of  
2 that my guess is that the Bylaws Committee will have a  
3 form in place.

4 And what I would like to do for my final  
5 comment before is there any questions is to point out  
6 these initial set of bylaws would not have happened if  
7 it were not for Joanne Armbruster, Bill Campbell, Tonni  
8 Bartholomew, Howard Sholl all made dedicated attempts  
9 to review these bylaws, make suggestions and edit the  
10 initial document that was put together by Julie  
11 Horowits (sic) so with that unless there are any  
12 questions that is mu summary.

13 MS. NIGH SWONGER: I think I might before take  
14 questions from the floor. I think a little apology to  
15 the Executive Board I believe we asked for people who  
16 had an interest in working on the bylaws committee to  
17 indicate that somehow while we were at the Denver  
18 meeting. And we never really formally asked for that.  
19 So I would just indicate that right now that if you  
20 want to look at our bylaws and propose any changes we  
21 do need a committee to work on that. So I would really  
22 like you to let me know if you have any interest in

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1 doing that because I think it is out job to appoint a  
2 Bylaws Committee. Seven members?

3 MR. KENNEDY: Seven members.

4 MS. NIGHSWONGER:

5 So if you have an interest on working on bylaws I  
6 would really challenge you to let me know that. You can  
7 email me. My email address is in the book. And I would  
8 be happy to hear you about that. Any questions for  
9 Kevin?

10 MS. Nighswonger: One thing that I failed to  
11 mention. It was just a little housekeeping thing. In  
12 the book where the members are listed. Behind Tab 3. I  
13 want you all to really take a good look at that list  
14 and also the bios for all of the members of the  
15 Standards Board because I think there are some people  
16 who thing that maybe they were left out, or maybe their  
17 bio isn't correct, or it is an old one. Anyway please  
18 look at that while you're here at this meeting and make  
19 sure that everything on your information is correct.  
20 Read your bio. And if there are any changes to anything  
21 on that page or in that section I would suggest you get  
22 hold of Adam. You can email Adam at the EAC and he will

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1 get those changes made before we send out anymore  
2 mailings or meet again. So it you will take a look at  
3 that that will be great.

4           Okay. I think I would like to call  
5 Commissioner Martinez to the front again. He is going  
6 to review and present the Standards Board charter. And  
7 we can talk about that little bit.

8           MR. MARTINEZ: Thank you, Madam Chair.

9           One person, and actually I believe you have  
10 heard his name over and over again, but needs to be  
11 properly introduced is Adam Ambrosi(sic) who is my  
12 special assistant and who had helped to pull together  
13 all of the logistics and all of the preparations for  
14 this meeting. He has done a terrific job. He did it in  
15 Denver. Adam is your point of contact for anything that  
16 you need. He will be floating around here for the next  
17 couple of days and will be available to help in any  
18 way. So that is who Adam Ambrosi is.

19           The Charter that we took up, the Federal  
20 Advisory Act, governs advisory committees to Federal  
21 agencies. It requires that we adopt a charter in the  
22 next couple of days.

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1 MS. NIGH SWONGER: If you don't have a copy of  
2 the charter it is outside on the table.

3 MR. MARTINEZ: Adam can you get a stack of  
4 copies and make them available.

5 MS. NIGH SWONGER: Maybe we can them pass out.

6 MR. MARTINEZ: Right.

7 MS. NIGH SWONGER: I am sorry. I meant to do  
8 that.

9 MR. MARTINEZ: Yes i should have done that.  
10 But we have them up front and Adam will get a stack and  
11 walk down the center isle here and pass them out.

12 The Charter, Madam Chair, is required under  
13 the Federal Advisory Committee Act and it essentially,  
14 I have a copy of one in front of me this is the Charter  
15 that governed the authority of this Advisory Committee  
16 for the past two years. And it simply has to be  
17 readopted. It is required to be readopted. And we  
18 readopt it every two years. And you have reached the  
19 two year mark.

20 Essentially the Charter reiterates it just  
21 takes the authority and responsibilities that come  
22 straight out of our governing statute which is the Help

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1 America Vote Act puts it into a Charter type of format  
2 and says, here are your responsibilities, here is how  
3 we are going to carry out those responsibilities. It a  
4 s pretty straight forward document. And we will ask  
5 that you all will allow for the Charter to be adopted  
6 once again.

7 And, Madam Chair, of course, if there is any  
8 questions or if there is a desire to wait until your  
9 plenary session tomorrow in case anybody has any  
10 questions or concerns obviously I don't think that is a  
11 problem from our perspective. It is just before you  
12 leave here at the close of business tomorrow we  
13 obviously need to readopt your Charter. As it is now  
14 about to expire. Thank you. Back to you Madam Chair.

15 MS. NIGH SWONGER: Thank you, Commissioner. I  
16 need a motion.

17 MS. VIGIL-GORON: Rebecca Vigil-Gorom from  
18 the State of New Mexico. I make a motion for adoption  
19 if there is no objection from the other members.

20 MR. KENNEDY; I will second that motion. I am  
21 Kevin Kennedy.

22 MS. NIGH SWONGER: All in favor?

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1 (Ayes from the audience).

2 MS. NIGH SWONGER: Opposed? Motion carries.

3 MR. MARTINEZ: Thank you very much.

4 MS. NIGH SWONGER: I'm sorry. I am out of  
5 order. We did not have discussion. Too late the motion  
6 carried.

7 would like to introduce my secretary, Joe  
8 Meyer. I am so nervous about this you all conduct  
9 these meetings a lot on a local level. This is not  
10 like we do in Wyoming. We take a sot gun and when  
11 someone is out of order we just shoot it. (laughter) I  
12 guess that would go over big here.

13 Okay. Next item on our agenda is the  
14 election of our Executive Board vacancy. With Mike  
15 leaving that left a vacancy on the Standards Board and  
16 on the Executive Board. Now when we went to figure out  
17 how to figure out how to fill this vacancy nothing was  
18 very clear about that in our Bylaws. So there is  
19 something for you to do.

20 So what the Board talked about-- many of you,  
21 or all of you, should have received emails from Adam  
22 with the names of the people who are interested in

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1 filling that vacancy. What the Executive Board talked  
2 and decided to do because we didn't have a nominating  
3 committee either, which is something that we need to  
4 appoint and get a nominating committee before our next  
5 meeting. We decided to go ahead and throw that out for

6 people to put their names in for that position. We did  
7 have four people that showed interest for that  
8 position. And I believe Adam set their bios out, that  
9 are over there on the table. That is another thing that  
10 is on the table. So if you don't have them with you  
11 maybe raise your hand and we can get you a copy of that  
12 also.

13           what we decided to do is take these names-- I  
14 would like the four people who did submit their names  
15 and their bio to give us a two or three minute  
16 introduction to themselves so that we will know their  
17 face and know who they really are. And I am going to  
18 give them that opportunity. And then we would like to  
19 pass out a paper ballot. And we are going to let all  
20 the voting members vote for one person that he would  
21 like to fill this vacancy on the Executive Board. And  
22 we have a very responsible Counting Board that is going

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1 to handle those ballots for us. Did everyone get a copy  
2 of the bios?

3           MR. CAMPBELL: Can I say something?

4           MS. NIGHSWONGER: Yes, Bill, you can say  
5 anything that you want.

6           MR. CAMPBELL: The bylaws do provide a method  
7 by which a method is filled. And that is the Executive  
8 Board Interim appointment. But we, as an Executive

9 Board, have discussed this. We took the message and  
10 hold closely the message that we received when we were  
11 first appointed or elected as an Executive Board and  
12 that is we never want the full Board to feel that we  
13 are trying to usurp any authority. And although you  
14 have delegated it to us we decided the best practice  
15 although it was only a four or five month period was  
16 actually wait to hold the position vacant and have the  
17 full election take place today.

18           So the by laws do have a provision that it  
19 didn't have to have sufficient information to allow us  
20 to set up that election today. We have a Nominating  
21 Committee and deadlines to next February. So I hope you  
22 understand how we got here and how we tried to limit

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1 the selection process without limiting the selection  
2 process and that the Bylaws Committee will know that  
3 one of their first tasks is to try to work out how this  
4 interim election will be can be made.

5           MS. NIGH SWONGER: Secretary Markowitz?

6           MS. MARKOWITZ: I am sorry for not thinking  
7 about this morning at our Executive Board meeting  
8 preparing for this today. But under Roberts Rules in  
9 order to have a paper ballot for elections we need to  
10 have a vote to do so. So I will actually so move.



11 MS. NIGHSWONGER: It is in the regular bylaws  
12 already.

13 MS. MARKOWITZ; Oh, good so it's in the  
14 regular bylaw. But thank you. Anyone else on our board  
15 want to make any comments about how we came to this  
16 process?

17 Okay. If not I'd like to introduce the four  
18 people. And if you would just step to the microphone.  
19 First I am going to call Carol Johnson who is the  
20 Deputy City Clerk from Manchester, New Hampshire.  
21 Anything you want to say, you can tell us about  
22 yourself.

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1 MS. JOHNSON: Good afternoon, my name is  
2 Carol Johnson. I am from Manchester, New Hampshire and  
3 I am the local election official. I have been in this  
4 municipal business for 29 years, hopefully I don't look  
5 it. So I have been around for a while. I am a certified  
6 municipal clerk. I have been involved in the City  
7 Clerk's Office since 1988. It was not my first  
8 introduction to elections but that is where I started  
9 helping run them for the city.

10 I guess somebody said to me very nicely in  
11 the hallway a little while ago that with every great  
12 act there are some unattended consequences which is why  
13 I responded to the email.

14           My bio is not contained in the book which is  
15 why I am mentioning that although I have been around  
16 for a couple of years. I am a certified municipal  
17 clerk. I have worked as the mediator, if you will, with  
18 the State and a lot of local election officials in the  
19 process of delving out the processes that Howard has  
20 brought us.

21           And the reason for responding to all of that  
22 was I think local election officials are the ones that

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1 frequently advise State because we are in the nitty  
2 gritty and we are in with the details of it. And we  
3 frequently work with other municipal and local election  
4 officials and help get through the process in a  
5 positive manner which is not always easy talk but  
6 usually we can get there.

7           The Standards Board is very much that. It is  
8 in an advisory capacity but the devil is in the detail.  
9 And I think this is the Board that needs to focus on  
10 those details for the EAC. So with that I will part  
11 company because we have a lot on our agenda today.  
12 Thank you.

13           MS. NIGHSWONGER: Thank you, Carol. Okay,  
14 Sandi Wasolowski. I hope I said that correctly Sandi is  
15 the Franklin City Clerk. She is from Franklin,

16 Wisconsin.

17 MS. WASOLOWSKI: Thank you. I am Sandi

18 Wasolowski. You pronounced it pretty close.

19 I am the Director of Clerk Services, City  
20 Clerk for the city of Franklin, Wisconsin. As a local  
21 election official I represent 1850  
22 local election officials in the state of Wisconsin. I

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1 have been involved in the administration of election  
2 since 1976. So for some 30 years that has been my  
3 desire my strong field.

4 I have been on the Standards Board since its  
5 inception. I briefly was the State of Wisconsin  
6 elections director and HAVA coordinator. I was-- I  
7 returned to the city of Franklin after a few months of  
8 doing that for the state. The weather in Washington has  
9 taken my throat and voice.

10 You can see on the bio that I have been  
11 involved with the state of Wisconsin HAVA State Plan  
12 Committee. I was a former member of the SVRS, the State  
13 Regulation Administration Steering Committee. I was-- I  
14 am still on the Standards Board for the state of  
15 Wisconsin. I am a member of the International Institute  
16 of Municipal Clerks. I am also a member of the  
17 Wisconsin Municipal Clerks Association. I am the past  
18 president of the Metro Milwaukee Municipal Clerks

19 Association.

20 I would be honored to fill the unexpired term  
21 of Mike. And I will be brief and that is it.

22 MS. NIGH SWONGER: Thank you. You all have

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1 weird names, Ed Szczesniak, they are worse than my  
2 name Ed is from New York. He is Onondaga County  
3 Commissioner of Elections for Syracuse.

4 MR. SZCZESNIAK: Thank you. Good afternoon.

5 The reason I responded positively I was  
6 selected and I was honored by back in 2003, January, to  
7 be selected to be as a local official on this Standards  
8 Board.

9 what I have attempted to do over the years is  
10 attend every meeting and be as active as I can in this  
11 particular group. I think it is a meaningful role for a  
12 very meaningful organization, the Election Assistance  
13 Commission in terms of the revolutionary impact it is  
14 having on elections administrations across this  
15 country.

16 Being from New York as you see I feel a  
17 little overwhelmed by three women and myself on this  
18 floor of candidates here. But what I want to say  
19 is rather than read through all my notes I have been  
20 involved in all levels from the local town level as a

21 candidate, as a party official right through county  
22 level, state level and national level in terms of

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1 involvement in the party as well with elections.

2 I think I have a fair understanding what it  
3 looks like at the County level. And I happen to be from  
4 New York State. But we have had the distinction of  
5 being the only state that has had DOG lawsuit against  
6 it to enforce HAVA. And I won't take responsibility for  
7 the lawsuit. But I know the difficulty that you all  
8 are going through in terms of trying to make this work.  
9 And the time lines that Congress has set for us to try  
10 to make this work.

11 I think that participating in things like the  
12 Standards Board goes a long way toward making sure  
13 everyone understands how things are happening at the  
14 local level to make this thing happen. I think our  
15 mission, if there is one, is to have a can do attitude  
16 to make this system work whether it is through Best  
17 Practices or whatever. We can share that knowledge and  
18 do it right at the county level as well as the State  
19 level and of course it all becomes the Federal level.

20 So with that I would honored if you would  
21 consider me to be the replacement for the unexpired  
22 term. Thank you very much.

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1 MS. NIGH SWONGER: There are other people  
2 trying to get rid of met to.

3 Last but not least Tonni Bartholomew, is the  
4 City Clerk of Troy, Michigan.

5 MS. BARTHOLOMEW: Thank you very much for  
6 letting me have this opportunity to speak to you. I too  
7 am very interested in this Directors position on the  
8 Executive Board. I am a local clerk for a Municipality  
9 of about 90,000 people. I do everything from recruit  
10 people to code the devices. I have been involved at  
11 various levels in the State. I do instructions for the  
12 MNL as well as the Michigan Tactical Association and I  
13 have been involved on various advisory boards for the  
14 state of Michigan. I am currently Voter File Advisory  
15 Board. I was on the JEC for the State Devices for the  
16 State of Michigan.

17 If you talk to people from Michigan they will  
18 say I am a very detailed person. I am all about all  
19 about code standards and laws and if it says do it they  
20 we do it. I think I can lend that kind of expertise  
21 from my experience which I am much older than I look, I  
22 have been involved with elections since 1986,'87. And

1 I would really like the opportunity to serve you and  
2 serve the people of the United States.

3 MS. NIGHSWONGER: Thank you, Tonni. How many  
4 of us can say we are older than we look?

5 okay. If there is no objections we will  
6 proceed with the lucky new candidate to join us on this  
7 Executive Board. Oh yes, did we get the ballots past  
8 out? would you pass the ballots out please and while  
9 you are doing that I want to remind you to vote for  
10 one, please do not over vote or under vote, vote for  
11 one. And if you can you can fold your ballot in half  
12 once. I am going to have Sarah and John collect the  
13 ballots. Sarah I am going to ask you to take this side  
14 of the room, on my right. John if you will collect the  
15 ballots on the left side of the room please. Todd would  
16 you like to get the map? So if you will mark your  
17 ballot and fold it in half they will pick up your  
18 ballot. And then we will have a group of people who  
19 will be counting the votes and we will announce to you  
20 on one of our breaks who the lucky person is.

21 Oh, yes, is there anyone in the room that did  
22 not respond to the first roll call? That is one thing I

1 want to ask you. Julie as been running around trying to  
2 track down her luggage. That is always a hard thing.

3 Sara John and Todd are going to be picking up  
4 the ballots and I would like to remind you that voting  
5 members only will be marking the ballots. Polls are  
6 officially closed.

7 Again I would like to remind you before we  
8 close this session of our meeting I would just like to  
9 remind you if you are interested in serving on a  
10 nominating committee before the next meeting we will  
11 have to utilize a nominating committee in order to  
12 get-- Phil I believe there are two more positions on  
13 our Board that will be vacant by people-- Oh, three?  
14 One State and two local. If you're interested in  
15 serving on a nominating committee I would appreciate  
16 getting information about that so we can do this  
17 process appropriately at our next meeting.

18 Thank you so much. And we will move on into  
19 the next portion of our meetings. If I can get  
20 Commissioner Martinez' attention. He is in the hallway  
21 there. We will move on to our next report on Getting a  
22 report on Provisional Voting. So will the panel who

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1 going to be talking on Provisional Voting if you can



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2 come on up here we will give you our seats.

3 MR. MARTINEZ: We will move into our next  
4 presentation. We are, by my watch, about 11 minutes  
5 off schedule right now. So we will make up the time  
6 during break, or at some point we will figure out how  
7 to do that. I know some of you had plans after the  
8 meeting is over to get out of the hotel and so forth.  
9 So we will try to honor our agenda as closely as  
10 possible.

11 Out next pane will give us an important  
12 presentation on Provisional Voting. The Help America  
13 Vote Act requires as all of you know that the EAC at a  
14 minimum consider the development of voluntary guidance  
15 on any of the Title 3 requirements the Title 3  
16 requirements of course for those of us with voting  
17 systems that require section 301, State wide  
18 voter Registration Voter Data Basis and Voter ID for  
19 certain voters that are in Section 303 and Section 302  
20 which is Provisional Voting and Poling Place Signage.  
21 So in looking at that mandate that the EAC developed  
22 Voluntary Guidance on Provisional Voting, we felt we

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1 needed to commission some sound research and analysis  
2 on the issue of provisional voting.

3 we turned for that task to the Eagleton--  
4 Tom, forgive me is it Eagleton Institute, yes, I almost

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5 lost it there, at Rutgers University. And in turn  
6 Eagleton Institute also brought in Moritz School of Law  
7 at the Ohio State University and thus we have Professor  
8 Edward Foley.

9 Tom O'Neil is the Project Manager, the lead  
10 consultant, if you will, to the EAC for the study that  
11 has been conducted on provisional voting. They will  
12 give you the details. We have been working with Tom now  
13 for perhaps the last eight or ten months perhaps longer  
14 than that. Lots of discussions about the issue. Tom  
15 will present, as well as professor Ed Foley who is the  
16 director of Election Law at Moritz program, an expert,  
17 well known national expert on election law issues  
18 covering the whole gamut of election law from  
19 redistricting to election administration.

20 We are very pleased to have their  
21 participation in this project. And particularly please  
22 to have them here today to present the draft product of

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1 what they have been working on and to answer your  
2 questions. What we have asked our presenters to do is  
3 give you an audio visual presentation that will be  
4 short and to the point we hope. After which our counsel  
5 Julie Thompson-Hodgkins is here. She is listed as the  
6 resource person and she will lead the discussion upon

7 the end of the presentation. And we hope that you will  
8 be-- that you will not be shy in asking questions and  
9 give us your opinions and advice on the work product  
10 you are about to hear about.

11 With that, Tom, I will give you the podium  
12

13 DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING  
14 Presenters: Thomas O'Neill, Provisional Voting/ Voter  
15 Identification  
16 Tim Vercellotti, Eagleton Institute.  
17 Edward Foley, Election Law @ Moritz School  
18 of Law .

19 MR. O'NEIL: Thank you Commissioner Martinez,  
20 I am happy to be here. We regard the presentation we  
21 are making at this meeting as phase of our research. We  
22 are going to be presenting our final draft, report and

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1 recommendations. And we hope that it will elicit from  
2 you comments and questions that will become part and  
3 parcel of our research efforts to understand the  
4 dynamics of provisional voting in 2004 and going  
5 forward. And we hope that the states have much to learn  
6 from one another in the provisional voting process and  
7 that we can do something to act as a catalyst in that  
8 mutual learning exercise that all of you are engaged in  
9 here as members of this Board.

10           As as Commissioner Martinez said we are  
11 looking at provisional voting. We have been working on  
12 this project just shy of a year. And today you're to  
13 going to the see sum of what we have concluded and our  
14 recommendations to the EAC. In term what we are  
15 recommending to the EAC is that they make  
16 recommendations for Best Practices to States and  
17 localities to improve the functioning of the  
18 provisional voting system.

19           Commissioner Martinez described the parties  
20 that are doing this, the Eagleton Institute of Politics  
21 at Rutgers State University in New Jersey, the Moritz  
22 College of Law at the Ohio State University which is

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1 well known for the website it maintains on election law  
2 all around the county.

3           Ed Foley and I are happy to be up here on the  
4 podium but we represent a larger group. This is the  
5 project management team. The principal investigators  
6 Dr. Ruth Mandel, the Director of the Eagleton Institute  
7 of Politics. With us here today, from the Project  
8 Management Team, are Ingrid Reed, Ansa Cadgie from the  
9 Moritz College of Law and one of our lead researchers  
10 Tim Bersolli, Assistant Director from the Center of  
11 Public Interest Polling that undertook the survey of

12 local election officials on which some of our findings  
13 are based.

14 We proceeded by looking at six questions that  
15 the EAC raised with us. And those questions are  
16 displayed on this slide they are basic, they are  
17 important and some of them I have to tell you are very  
18 hard indeed to answer.

19 How do states prepare for HAVA's  
20 Provisional Voting Requirements?. How did preparation  
21 and performance vary between states that previously had  
22 some form of provisional ballot and those that did not?

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1 We will be coming back to that issue several times via  
2 this report. And so we have developed a short hand for  
3 it. We call them Old states and New States. And I hope  
4 you will bear with me. If you come from one of those  
5 Old States we don't mean it personally.

6 How did litigation effect the implementation  
7 of provisional voting? How effective was provisional  
8 voting in enfranchising qualified ? Did state and  
9 local processes provide for consistent counting of  
10 provisional ballots? Did local election officials have  
11 a clear understanding on how to implement provisional  
12 voting?

13 To answer those questions we undertook  
14 several steps. Our aim being throughout this to provide

15 the EAC with a strategy to engage the states in a  
16 continuing effort to strengthen the provisional voting  
17 process and increase the consistency, this is  
18 important, increase the consistency by which  
19 provisional voting was administered. Particularly  
20 consistency within the State as opposed to consistency  
21 on the States.

22 we surveyed 400 local election officials. we

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1 reviewed the EAC election day survey. We analyzed the  
2 states experience with provisional voting mostly on a  
3 statistical basis. we collected the provisional voting  
4 statutes and regulations for each State in the country.  
5 And in fact part of our deliverables to the EAC was a  
6 continuum of those statutes and regulations. And they  
7 will all be on one CD rom for easy access. And we  
8 analyzed the litigation that took place concerning  
9 provisional voting issues in 2004.

10 summary of findings, again looking at this  
11 consistency issue which is so important. There was  
12 considerable variation among the States. HAVA allows  
13 the States considerable latitude in how to implement  
14 provisional voting including deciding who beyond the  
15 required categories of voters should receive  
16 provisional ballots. And how to determine which

17 provisional ballots should be counted. We had just shy  
18 of two million ballots cast in 2004 and 63 percent of  
19 them were counted.

20           Now the variation of among the States is  
21 enormous. The percentage of provisional ballot in the  
22 total vote varied by a factor of a thousand. From as

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1 high as seven percent in Alaska to Vermont's six one  
2 thousands of one percent. Now that's like the lobster  
3 production between Maine and Utah. You don't find that  
4 large a difference among States on measures like this.  
5 So there is an enormous variation.

6           And the portion of the provisional ballots  
7 counted varied significantly from 96 percent in Alaska  
8 to 6 percent in Delaware. We don't need to tell you is  
9 that the percentage of total votes cast rises in terms  
10 of provisional votes being a greater that becomes more  
11 and more significant in closer elections. If the  
12 election margin of victory is two percent but seven  
13 percent in provisional ballots that is a very  
14 different scenario than if one percent was of ballots  
15 are provisional but the victory was ten percent.

16           There are some sources of the variation among  
17 the States. Number one that jumped out at us was  
18 experience. The share of provisional ballots in the  
19 total vote was six times greater in States that had

20 used provisional ballots before than in States where  
21 the provisional ballot was new before.

22 MR. VERCELLOTTI: It is good to be an old

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1 State.

2 MR. O'NEILL: In the 25 states, 25 States  
3 that had experience with provisional balloting 18 were  
4 new.

5 Administrative arrangements. Simple  
6 administrative differences also I think go a long way  
7 in explaining the variation in the use of provisional  
8 ballots.

9 The time to evaluate ballots. How much time  
10 after the election do you give officials to determine  
11 whether a provisional ballot should be counted? States  
12 that provided less than a week, counted a little bit  
13 more of a third of the provisional ballots counted.  
14 States that permitted more than two weeks counted 61  
15 percent. That time factor is important.

16 And voter registration data basis. States  
17 with voter registration data basis, and there were only  
18 a few of them in 2004, counted an average of only 20  
19 percent of the provisional ballots cast. States without  
20 those data basis counted twice that number.

21 MR. FOLEY: If I can just underscore these two



22 points that you're going to hear throughout this

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1 presentation the importance of both of them. In other  
2 words the time to evaluate the ballots increasing the  
3 the accuracy is a very important finding. And it leads  
4 to an issue on how to trade off the value of accuracy  
5 verses speed or completeness of finality of the  
6 election. And we will be talking ore about that.

7           Likewise another theme that will run  
8 throughout this presentation is the important  
9 relationship between the provisional voting system as  
10 one component of an overall election system with the  
11 registration data basis. Those two subsystems if you  
12 will are very much integrated as you know.

13           And they will be increasingly integrated  
14 under HAVA and under centralized voter data basis.

15           MR. O' NEILL: Now turning from looking at  
16 variation across States to variation within States.

17           we gathered county election-- provisional  
18 ballot data for 20 States. Had we been able to get data  
19 from all of the States at a county level the ranges and  
20 variation I am reporting to you might be wider than  
21 what we found. So bear that in mind. The rate of  
22 counting provisional ballots within the same State

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1 varied by as much as 90 to 100 percent among counties  
2 in the State. The resources available to administer  
3 provisional voting varied significantly within the same  
4 State.

5           The election day study found that staffing  
6 problems appeared to be particularly acute in  
7 jurisdictions in the lower income and education  
8 category. Small rural jurisdictions, large poor urban  
9 jurisdictions have higher rates of inadequate training  
10 for poll workers. The jurisdictions in poorer areas  
11 reported more inactive voter registrations and more  
12 provisional ballots cast. Richer areas had more poll  
13 workers per polling place and reported lower rates of  
14 staffing problems per precinct.

15           There are other effects that go beyond what  
16 is going on at the State other than socio-economic. Some  
17 reports from the States suggest possible sources of  
18 lack of consistency. You know Iowa cast some  
19 provisional not signed in the assigned precincts. Even  
20 thought the States policy was to count only those  
21 ballots cast in the correct precinct. So you could see  
22 how that would enlarge the variation among counties in

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1 the percentage of provisional votes that were cast.  
2 similar kinds of free lancing were going on in  
3 Washington state.

4 MR. FOLEY:: Another theme that we found.  
5 There is a difference between the rules on the books  
6 and the rules as they were enforced in practice. And  
7 that obviously is of concern potentially in respect to  
8 litigation when we get to that point.

9 MR. O'NEILL: Turning to from this sort of  
10 summary in terms of what the variation was all about to  
11 some of the details of the answers we developed in each  
12 of the questions that were put to us by the EAC.

13 First how did States prepare for the  
14 provisional voting requirement? Most election  
15 officials we talked to in our survey received  
16 provisional voting instructions from State government.  
17 But the type and amount of that instructions varied  
18 very widely across the States. Almost all of them  
19 provided training or written instruction to precinct  
20 public poll workers. Only in about one in ten made  
21 available to poll workers the voter registration data  
22 base. Equally rare was training or written procedures

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1 for poll workers to understand how provisional ballots  
2 would be evaluated.

3           Second question, how did preparation and  
4 performance vary between States, the old States and the  
5 new States? The local election officials in the old  
6 States felt more confident about exercising their  
7 responsibilities for provisional voting. As we earlier  
8 18 States were new to provisional voting, 25 others had  
9 experience.

10           The New State officials I thought they did  
11 not receive enough information more frequently and felt  
12 and felt more funding was necessary to educate voters  
13 about, their rights to cast a provisional ballot.  
14 Ballot .

15           Local Officials in the old states counted  
16 more ballots, were better prepared to direct voters to  
17 their correct precincts with maps and other types of  
18 information. And regarded provisional voting as easy to  
19 implement.

20           Officials from new states were more likely to  
21 believe that voters needed more information where to  
22 vote and to feel that provisional voting created

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1 unnecessary problems. There was much less if a response  
2 than from officials in the old states.

3 MR. FOLEY: One could abstract from that  
4 provisional voting is a dynamic process. It is not  
5 static, it's not that HAVA created provisional voting  
6 and now we have it and we are done. There is a learning  
7 curve here. It is not an all or nothing situation.  
8 There are shades of gray involved. Sometimes it is sold  
9 as a safety mechanism, or fail safe. But the ability  
10 for it to perform as a fail safe is dependant on  
11 various factors. It's not automatic.

12 MR. O'NEILL: Question three: How did  
13 litigation effect the implementation of provisional  
14 voting?

15 Litigation before the election clarified  
16 voters rights. To sue in federal Court to remedy  
17 violations of HAVA; to receive provisional ballots even  
18 though they wouldn't be counted; have the voters be  
19 directed to the right precinct. And most of the  
20 litigations occurred to late to influence how states  
21 implemented provisional voting in the year 2004. Even  
22 with that finding I think it is a fair assessment to

1 say that pre election litigation was more successful in  
2 changing the dynamic of at least the rules. And to  
3 clarify what the rules were going into election day.  
4 And therefore could be perceived as having some utility  
5 in the process. Post election litigation only invited

6 more complexity, more problems, more uncertainty and  
 7 usually unsuccessful from the litigants perspective and  
 8 obviously for complicated from the administrative  
 9 perspective as well.

10           How effective was provisional voting in  
 11 enfranchising qualified voters?

12           And I suggested at the outset some of these  
 13 questions were very hard to answer. And this was among  
 14 the hardest. To know the answer to how effective was  
 15 provisional voting in providing that fail safe that Ed  
 16 just mentioned and you show up and your not on the  
 17 registration rolls how effective is getting that  
 18 provisional to you? Ideally to know that we have to  
 19 know the decisions that were made in 200,000 precincts  
 20 around the country. And we would have to know the  
 21 criteria that the evaluators of provisional ballot used  
 22 when the process came to them to decide which ones

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1 counted and which ones didn't. And there is a  
 2 considerable element of individual eccentricity in  
 3 making these decisions. It is hard to predict and  
 4 therefore we had to look for a more abstract way to  
 5 have some kind of number to attach effectiveness. If  
 6 that batter hits the ball one third of the time as it  
 7 comes across the plate it is .333. So we are aiming for

8 something not quite as precise as Ted Williams 405 but  
9 something that would at least put us in the order of  
10 magnitude.

11           we know that 1.2 million voters, or about  
12 one percent of the turnout, got to vote by provisional  
13 ballot who otherwise would have been turned away. But  
14 what is the denominator of that? what do you divide  
15 into? well in 2000 the CalTech MIT voting technology  
16 estimated that two and a half million to four million  
17 votes were lost in the 2000 Presidential election  
18 because of registration mix ups or confusion at the  
19 polling place.

20           Now registration mix up and confusion at the  
21 polling place are pretty good description of what is  
22 going to put someone in the line for provisional ballot

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1 instead of to get on the regular machine. So 1.2  
2 million voters casting a provisional ballot and maybe  
3 two and a half to three million figure in the number of  
4 them who were there but didn't get one, we figure that  
5 provisional balloting might just have been 50 percent  
6 effective in 2004. It's an approximation but it  
7 indicates something I think we all will agree about  
8 which is there is room for improvement.

9           Indeed legislative activity in the states  
10 following the 2004 election leads us to believe that

11 the states themselves recognized that they were not  
12 satisfied with the effectiveness of their provisional  
13 voting systems and made efforts to improve that through  
14 legislation.

15           Question five: Did state and local processes  
16 provide for consistent counting of provisional  
17 ballots?

18           Again this is a topic of considerable  
19 interest. As we have already talked about there was  
20 little consistency among states and within states. That  
21 the use of provisional ballots was not distributed  
22 evenly across the country. In fact six states accounted

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1 for two thirds of all the provisional ballots cast. The  
2 share of provisional ballots in the total vote was six  
3 times greater in experiences states than in new states.  
4 The more rigorous the state's voter ID requirements the  
5 smaller percentage of provisional ballots that were  
6 counted. And new states with registration data bases  
7 counted 20 percent of the ballots past. Those without  
8 data bases counted more than double that rate, 44  
9 percent.

10           MR. FOLEY: And I can add to that. The most  
11 common reason why a provisional ballot was not counted  
12 in most states it was reported that the provisional



13 voter was not a registered voter. That was the reason  
14 given. What is poorly understood unfortunately at this  
15 point is what underlies the reason why that voter was  
16 not registered according to the system, yet that voter  
17 attested that to believing he or she was registered by  
18 HAVA. And what our research has shown, as Tom just  
19 suggested, is that there is a considerable variation  
20 both among states and within states as the method for  
21 checking whether or not the provisional voter is  
22 registered.

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1           The methods and the processes that the system  
2 uses to try to verify whether this ballot should count  
3 varied considerably. And there is very little rule  
4 guidance as to what that methodology should be.

5           So an important part of our presentation  
6 today is the need to better understand that and to  
7 develop more guidelines. The theme here is there is  
8 just a lot of difference just about the mechanics on  
9 how to go about determining whether this voter is even  
10 an eligible.

11           MR. O'NEILL: Continuing on with the  
12 consistency question.

13           States that allowed out of precinct ballots  
14 counted 65 percent of the provisional ballots cast.  
15 States that recognized only ballots cast in the proper

16 precinct counted 42 percent. In old states the  
17 difference was greater than that 52 percent were  
18 counted in states requiring new district ballots and 70  
19 percent were counted in those allowing other precinct  
20 ballots.

21           This aspect of the consistency issue takes us  
22 back to the time question. Fourteen states permitted

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1 less than a week to evaluate provisional ballots, they  
2 counted 35 percent of the ballots. Fifteen states  
3 between one and two weeks, they counted 47 percent of  
4 the ballot. And 14 states that permitted more than two  
5 weeks they counted 61 percent of the ballots. Just the  
6 administrative handling of the ballots makes a  
7 difference in the performance of the state.

8           Conclusions with this? The states have  
9 latitude on how they meet under the HAVA requirements.  
10 A considerable degree of variation among the states are  
11 to be expected. And here is the interesting observation  
12 about that. If the variation among the states reflects  
13 differences in their political cultures it is likely to  
14 persist. If it reflects a learning curve for the new  
15 states figuring out how to do this provisional ballot  
16 thing then consistency among the states is likely to be  
17 achieved much more quickly than if some states have a

18 fundamental philosophic objection to the concept of the  
19 provisional ballot.

20           Questions six: Did local election officials  
21 have a clear understanding on how to implement  
22 provisional voting?

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1           what we did was ask the local officials  
2 themselves to characterize understanding. From a sample  
3 of about 400 of them around the country eight out of  
4 ten reported receiving instructions from state  
5 government; four out of ten, only four out of ten I  
6 should say, felt poll workers needed more training to  
7 understand their responsibilities.

8           Moving back now from asking the local  
9 officials themselves for some kind of objective  
10 evaluation on how the process was managed. The lack of  
11 consistency among and within states indicates the  
12 differences in how our election officials understand  
13 their responsibilities and managed the 2004 election.

14           In thinking through this body of information  
15 we have to recognize the existence of inconsistency of  
16 understanding between the states and within the states.  
17 Particularly of concern are the inconsistencies within  
18 a state. And that we need to forge away to approach  
19 this as a learning experience, a way to understand and  
20 explain the rules by which each state governs

21 provisional voting .

22                   And we will phrase this as a set of

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1 questions. Does the provisional ballot system  
2 distribute, collect, record and tally provisional  
3 ballots with sufficient accuracy as to be seen as  
4 procedurally legitimate by both supporters and  
5 opponents of the winning candidate. That is the acid  
6 test here.

7                   Second: Does the provisional balloting  
8 system place administrative demands on local  
9 jurisdictions that are realistically related to the  
10 staff and other resources available to fulfill those  
11 demand?

12                   Third: Is the variation within state great  
13 enough to cause concern that the system might not be  
14 administered uniformly from county to county.

15                   MR. FOLEY: I just want to act on Tom's point  
16 about the acid test of legitimacy. The reason why  
17 clarity is so important to that is again because the  
18 provisional votes matter as you know when there is a  
19 close race and when there is a dispute about what to do  
20 with these ballots. Should they be verified or not?  
21 And if the rules for that process are unclear and  
22 disputable that casts everything in doubt. It casts the

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1 process in doubt; it casts the results of the election  
2 in doubt. So clarity is the first and most important  
3 value for bringing legitimacy to the process. Because  
4 it will be a process that unfolds after election day in  
5 the heat of the moment. And to avoid litigation, and  
6 particularly destabilizing litigation, clarity has to be  
7 the first priority.

8 MR. O'NEILL: In looking for clarity a place  
9 the states often turn to is the history of litigation.  
10 Litigation coming out of the 2004 election clarified  
11 the right of voters to receive provisional ballots even  
12 though the election officials were certain they would  
13 not be counted. And lawsuits prompted election  
14 officials to take better care in instructing precinct  
15 officials on how to notify voters about the needs and  
16 go to the correct precinct in order to cast a countable  
17 ballot. Those are the issues of clarity like we have  
18 just been discussing.

19 We recommending to the EAC that it recommend  
20 as Best Practices to states the promulgation of clear  
21 standards for evaluating provisions ballots. And  
22 provide training for the officials who will apply those

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1 ballots. we believe they should provide materials to  
2 local jurisdictions. To train polling workers on such  
3 procedures as how to locate polling places for  
4 potential voters who show up at the wrong place. And  
5 to think that the only permissible requirement to  
6 obtain a provisional ballot is an affirmation by that  
7 voter standing in front of a local election official  
8 that that voter is registered in the jurisdiction and  
9 eligible to vote in an election for federal office. And  
10 poll workers need the training to understand their duty  
11 to give those voters a provisional ballot.

12 MR. FOLEY: And on that point, on the voters  
13 affirmation, it's their sincere belief that they think  
14 that they are registered. The polling place is not the  
15 time or place to verify eligibility in determining  
16 whether the voter is correct or not.

17 And in that sense as a working rule, as a  
18 practical matter given long lines in a high turn out  
19 election, you know if a voter asks for provisional  
20 ballot they really ought to get one. Then you can  
21 figure out what to do with it later the one question  
22 that can be asked is: Do you really think you are

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1 registered? If they think they are registered they  
2 should get that provisional ballot. It should not be a  
3 complicated process to administer provisional voting at  
4 the precinct.

5           There maybe complexities that are unavoidable  
6 after election day. And again it might be best to  
7 minimize those complexities as we get into. But it is  
8 very, very important to stream line the process at the  
9 polling place itself. And so it should be virtually  
10 automatic that if a voter says: I think I am entitled  
11 to vote; that they get the provisional ballot.

12           MR. O'NEILL: We believe the general way the  
13 states can most effectively pursue improvements in the  
14 provisional voting process is to take a quality  
15 improvement approach.

16           Defining quality begins in asking how well  
17 the system works now. But figuring it out to how open  
18 it is to error, recognition and correction. And by  
19 asking how well our provisional voting process is  
20 connected to the other parts of the machine that they  
21 need to be well characterized to the registration and  
22 voter identification names. So to do all that requires

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1 a systematic quality improvement program that starts by  
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2 collecting data that is not now generally available.

3           The data collected should insure a list of  
4 the specific reasons why provisional ballots were not  
5 counted; measures of variance among jurisdictions,  
6 counties or even precincts; a hard look at the time  
7 actually required to evaluate the ballots by  
8 jurisdiction and then comparing that to what the  
9 statute or regulation allows in that state. If it is  
10 simply unrealistic what kind of changes are needed? And  
11 an accurate and timely report on provisional votes cast  
12 and counted by jurisdiction down to the precinct level  
13 so you can spot anomalies and take a look at where more  
14 poll worker training may necessary to get them up to  
15 the standard you would like the entire state operate  
16 at.

17           MR. FOLEY: Just to give an example of this.  
18 Most of you know about Washington State's experience  
19 with its gubernatorial election in 2004. That  
20 illustrated several things about this process. One of  
21 which was this issue is the provisional voter  
22 registered? And in some localities the answer came

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1 back yes, and this was not true by the way of only  
2 Washington State, this occurred in other states in  
3 lower profile races. So the answer comes down back "no,



4 we have looked at our data base, our files and we don't  
5 have this voter as a registered voter." Then the  
6 question arises well they are not in the system but did  
7 you go back to the original voter registration card and  
8 see for whatever reason that card for a new registrant  
9 was not entered in the system in the run up to this  
10 particular election? Sure enough it turned out there  
11 were a substantial number of voters in Washington  
12 state, and elsewhere, that had submitted timely  
13 registration forms; that had submitted timely  
14 registration forms; had submitted procedurally proper  
15 registration forms and they should have been in the  
16 system but were not through no fault of their own.

17 That's the very thing that a provisional  
18 voting fail safe is supposed to protect against. But it  
19 couldn't protect against it if the only checking  
20 mechanism is to go back to the data base as opposed to  
21 going back to the original voter registration card. The  
22 reason why the poll book, the precinct official has,

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1 didn't the registered voter is because they weren't in  
2 the system to begin with. So there was a match between  
3 what the poll book said and what the system said but  
4 the misstep was getting that card entered in the system  
5 in the first place given the high volume of new  
6 registrations filed at the deadline.

7           The courts ordered those forms to be entered  
8 into the system and ordered those provisional ballots  
9 to count several weeks after the election had already  
10 be certified.

11           So here is an example of where the  
12 methodology used and the process used determined what  
13 does it mean to be a registered voter really matters  
14 which is why there has to specific standards on that.

15           And that gets into the finality point, or the  
16 timing point that we have already talked about. If it  
17 takes, five, six, eight weeks to add those hundreds of  
18 voters to the certified total you run up against  
19 serious deadlines. You have past certification  
20 deadlines. In some cases you have past inauguration  
21 deadline. You have past the Federal so called safe  
22 harbor deadline for Presidential races.

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1           So there was an ability to increase accuracy  
2 that had outcome determinative effects in terms of who  
3 was the winner of the governor's race in Washington.  
4 That final certification occurred two days before New  
5 Year's Eve. So again accuracy verses timing is a these  
6 that needs to be evaluated as you specify what are best  
7 practices for implementing the evaluation process.

8           MR. O'NEILL: The heart of this quality

9 approach for improving the provisional voting process  
10 is to access each stage of the provisional voting  
11 process. Before the election the better the voters  
12 understand their rights and obligations the easier the  
13 system will be to manage and the more legitimate the  
14 appearance of the process.

15           At the polling place? Avoiding error at the  
16 polling place will allow more voters to cast a regular  
17 ballot and all others who requested cast a provisional  
18 ballot. In the evaluation process the clarity of the  
19 criteria for evaluating voter eligibility is critical  
20 to a sound process for deciding which of the cast  
21 provisional ballots should be counted.

22           And post election we believe the best practice

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1 is for states to consider how to complete, as Ed was  
2 just saying, all the steps in the evaluation of  
3 ballots and challenges to that determinations within  
4 the five weeks available in Presidential elections it  
5 is important to provide timely information to voters  
6 about the disposition of their provisional ballot. For  
7 instance having cast a provisional ballot this time are  
8 they now registered for future elections. They should  
9 know that. If not what do they need to do to be  
10 covered?

11           As I said at the opening we look at this  
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12 briefing as an opportunity to continue our research by  
13 hearing from you. The detailed examination of each  
14 stage in the provisional voting process we hope can lay  
15 the foundation that each state needs to improve its  
16 system.

17           Efforts to improve provisional voting may be  
18 most effective as a part of a broader effort to  
19 strengthen voting systems. Collecting and analyzing  
20 data about those systems will enable states to  
21 identify which aspects of the registration and  
22 electoral process are most important into the

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1 provisions voting process. Responsible officials  
2 can then look to their registration system, their  
3 identification requirements, poll worker training, as  
4 ways to reduce the need for voters to cast their ballot  
5 provisionally and evaluate them consistently. Thank you  
6 and we are looking forward to our discussion.

7           MR. FOLEY: Likewise. Thank you.

8           And just one more general remark to share  
9 with you before turning it over for questions and so  
10 forth. If 2004 was a learning experience in terms of  
11 the provisional voting process. And we saw stresses  
12 imposed on that system and we were asking could the  
13 provisional voting process handle the stresses of a

14 close election and the demands put on it. I think right  
15 now, two years later in 2006 we are in an interesting  
16 situation because there has been reaction to 2004, as  
17 Tomb said. There has been new legislation.

18           Some of that new legislation has alleviated  
19 some of the stresses that were imposed onto the  
20 provisional voting system, having increased its ability  
21 to be the fail safe that HAVA and Congress spoke of.

22           But some of the legislation and some of the

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1 developments candidly put more stresses on the  
2 provisional voting system. It is possible that as we go  
3 forward in elections this Fall and in the future we  
4 will see higher rates of provisional ballots past, not  
5 lower rates more demands in terms of how to evaluate  
6 them. Some of this again is maybe good and important  
7 for understandable reasons, but as the data bases get  
8 rolled out and as there are complexities in terms of  
9 rolling out the data bases that may cause more  
10 questions to be asked about the eligibility of a  
11 registered voter. And that may cause that voter to cast  
12 a provisional ballot whereas in the past the question  
13 would not have been raised and would have cast a  
14 regular ballot.

15           Likewise in the states without the voter ID  
16 requirements those new requirements may raise questions

17 about eligibility causing more votes to be cast as  
18 provisional votes in stead of regular votes.

19           So that has created a rather interesting  
20 phenomenon and that HAVA said from a voting rights  
21 perspective, if you will, said we saw the situation in  
22 which a voter went to vote, turned up at the voting

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1 place on election day believing that they were entitled  
2 and then finding that they were purged, sometimes  
3 erroneously purged, and they were turned away. So what  
4 provisional voting was designed to do is to make sure  
5 no one was ever turned away like that. They could at  
6 least cast a provisional ballot and then we could ask  
7 questions.

8           Some of the new legislation and some of the  
9 new demands being put on the system have instead of  
10 saying this is really for the voter. They are saying  
11 this a reason to check eligible voters and therefore  
12 instead of using a provisional ballot to give the voter  
13 an opportunity so that they are not cast away we are  
14 going to use this provisional ballot so that the voter  
15 doesn't case a regular ballot. we are going to put  
16 them in the question mark category rather than the yes  
17 category which is different than putting them in the  
18 question mark category rather than the no category. But

19 as that happens more questions marks get raised so  
20 more stress gets put on the system. Thank you.

21 MS. HODGKINS: Thank you Mr. O'Neill and  
22 Professor Foley. Members of the Standards Board we

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1 have about 35 minutes until the end of this session  
2 for your discussion, comments. I know many of you have  
3 questions about perhaps the methodology, their  
4 conclusions maybe experiences you would like to share.  
5 I am going to be here to make sure this is an orderly  
6 process. And as you had in your previous session there  
7 are several hand held mics that are around the room.

8 If you will indicate to me that you're  
9 interested in making a statement will recognize you and  
10 then we bring a mic to you and let you speak. Please do  
11 remember to identify yourself before you start speaking  
12 Mr. Szczesniak?

13 MR. SZCZESNIAK: Yes. I guess through from  
14 the presentation I got the sense that many states as  
15 part of your survey have coworkers make the  
16 determination as to whether or not the provisional  
17 ballot was a good deal or not; is that correct, or was  
18 I misunderstanding something.

19 MR. O'NEILL: We did not mean to imply that.

20 MR. SZCZESNIAK: That's good because it  
21 didn't make any sense to me.

MR. FOLEY: It is after determination. And

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1 sometimes it's two after the facts that the process  
2 gets wrapped up. Sometimes it is two weeks. So there is  
3 considerable variation on how long the boards take to  
4 process the provisionals.

5 MR. O'NEILL: Another comment is many people  
6 that do put that out are the old states. But it is  
7 truly a fail safe provision and we focus that in the  
8 training of the inspectors, poll workers so they  
9 understand that nobody leaves the polling place  
10 without having had the opportunity to vote either on  
11 the machine, by court order or by provisional ballot.

12 MR. SZCZESNIAK: But many people cast a  
13 ballot thinking they are registered voters and they  
14 aren't. There is a requirement that we do not put in  
15 our poll box any inactive voters whether active or not.  
16 Many people who show up at the right place but they  
17 just can't. We give them the affidavit and we check  
18 them out and give them a chance.

19 Some reason they are not counted is that  
20 people have moved within out jurisdiction. They are in  
21 the right church and the wrong pew. They are still  
22 eligible to vote but now with the new requirement and



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1 because of federal lawsuits says right church wrong pew  
2 that's okay. But if they are in the wrong church they  
3 just can't be counted. So we tell them to go to the  
4 right polling place if they want to get counted.

5 MS. HODGKINS: Mr. Kennedy?

6 MR. KENNEDY: Kevin Kennedy from Wisconsin. I  
7 have a question about the methodology in the sense that  
8 you have 43 states that do not include the six states  
9 with election day registration?

10 MR. O'NEILL: That is correct, yes .

11 MS. HODGKINS: Yes, ma'am behind Al.

12 MS. ROUST: Sue Roust from South Dakota. On  
13 page eight of your handout at the top that says: "EAC  
14 should recommend to the states that they" and one of  
15 the bullet points is: " Make clear the only permissible  
16 requirement to obtain a provisional ballot is an  
17 affirmation that the voter is registered in the  
18 jurisdiction and eligible to vote in a federal  
19 election."

20 Are you saying that you feel that the EAC  
21 should recommend that on that question of do you have  
22 to be at the right precinct or you just have to be

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1 eligible to be registered anywhere in the jurisdiction.  
2 Are you saying that the EAC should come down on the  
3 side that if you go to the wrong precinct that your  
4 registered somewhere in that jurisdiction that you  
5 should be allowed to vote or that your provisional  
6 ballot should count?

7 MR. FOLEY: Well first of all it is our  
8 understanding in examining the case law that has  
9 developed on this that HAVA itself does not require the  
10 states to adopt the so called wrong precinct you count  
11 the ballot rule.

12 So it couldn't be mandated as a matter of  
13 what HAVA requires. In terms of-- if EAC considers  
14 itself in a position to provide best practice type  
15 recommendations that aren't necessarily HAVA  
16 requirements then it could be considered whether or not  
17 as a policy matter is there something advisable. And  
18 actually in reference to the New York litigation it  
19 seemed that a middle step position is that if a state  
20 is going to allow for multiple precincts to exist  
21 within the same location and the voter shows up at the  
22 correct location but ends up in the wrong line at that

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1 location could that be considered attributable to  
2 administrative error as opposed to voter error? That  
3 was the holding of the New York case.

4 So that the voter should get the benefit of  
5 the doubt if they go to the right place even if they  
6 ended up in the wrong line. And we thought as a policy  
7 matter that was appropriate to recommend as best  
8 practices. Beyond that probably it makes sense to say  
9 that as a matter of Federalism in federal law it's  
10 really up to the state whether to go beyond that.

11 MS. HODGKINS: Mr. Clark.

12 MR. CLARK: Bradley Clark from California.

13 I was just curious.

14 How you on methodology how you selected your  
15 400 jurisdictions to survey?

16 MR. O'NEILL: It was a stratified random  
17 sample we looked for size, a mix of size, a mix of  
18 urban and suburban and then selected randomly from  
19 within that. We have our poll director here if you  
20 would like more details.

21 MS. HODGKINS: Mr. Sholl.

22 MR. SHOLL: Howard Sholl from Delaware. I

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1 have a few comments.

2 First of all in your analysis you seemed to  
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3 forget there are different types of provisional  
4 ballots. By that I mean in Delaware we had 300 and some  
5 odd provisional ballots that were cast between 400.000  
6 people and you were saying we were doing a very good  
7 job. Well, actually if you would count our fail safe if  
8 someone changes an address instead of sending them to a  
9 different a different polling or giving them a  
10 provisional ballot we made every effort to qualify them  
11 and let them vote normal. So instead of having 6  
12 percent rate that we counted you count the 6 or 7  
13 thousand change of addresses that we did at the polling  
14 place we ended up counting 95 percent of our so called  
15 provisional ballots.

16           So there is a difference of what a state  
17 calls a provisional ballot. You will find that it  
18 varies across the country and that could effect your  
19 analysis to some degree.

20           Second of all. You are very correct  
21 information needs to be distributed to the election  
22 officials and their friends. It also needs to go to the

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1 media who consistently misrepresented what provisional  
2 voting was. The media in the Philadelphia market said  
3 you can vote anywhere you want to. Well that wrong in  
4 Pennsylvania, that was wrong in Delaware and I don't

5 know about New Jersey. But people picked up information  
6 from elsewhere in the country and misrepresented it to  
7 their populations. So the media needs a heck of a lot  
8 of education about what provisional voting is so they  
9 don't misrepresent it to the voter, because we can't  
10 counter what the media blitz misrepresents.

11 MR. FOLEY: Well that underscores what we  
12 were saying were A this is a dynamic evolving process  
13 and not static. We couldn't agree more with that point.  
14 Secondly we agreed very much as Tom said that there  
15 were challenges, methodological challenges in terms of  
16 finding the right data, evaluating the right data, and  
17 one theme in our recommendation, and you know-- besides  
18 we are a snapshot or synopsis of the larger report. But  
19 one theme is that a very helpful role that the EAC can  
20 play is that of data collection, data consistency in  
21 terms of terminology or data classification of data. So  
22 we hope that through this cycle of empirical studies is

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1 just the first in a series of cycles of empirical  
2 studies that increase knowledge and increase  
3 understanding of the mechanics of the process.

4 MR. O'NEILL: Can I respond also.

5 MS. HODGKINS: Sure.

6 MR. O'NEILL: Mr. Shall you said that there  
7 are different kinds of provisional ballots in Delaware.

8 Is there more than one category of provisional ballot  
9 that you report? Or are there some sorts of things that  
10 provisional ballots aren't really provisional ballots  
11 as we have been referring to? When you talk about  
12 qualifying voters for instance to make sure that they  
13 can vote a regular ballot?

14 MR. SHOLL: Howard Sholl from Delaware.

15 No, we call a provisional ballot exactly  
16 what it is it is a provisional ballot. It's the last  
17 chance to vote. So that's what we report, we don't  
18 report fail safe, what we call fail safe voting call.  
19 We update your address at the polling place, we verify  
20 the registration and we let them vote it. That's not in  
21 our lingo a provisional ballot. But it is in the lingo  
22 of other states what a provisional ballot is.

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1 So when you're looking at Delaware verses  
2 Ohio verses California you're looking at apples and  
3 oranges.

4 MR. O'NEILL: Thank you.

5 MR. HODGKINS: The lady in the back and then  
6 we will come over here for Mr. Lomax.

7 MS. ANDERSON: Sharon Anderson from Minnesota.

8 My question is about limiting the study to 43  
9 states that do not now have election day registration,

10 and I guess North Dakota doesn't have registration at.  
11 I am curious about studying those EDR states in the  
12 future. And the reason that I ask that is I have spent  
13 my entire 27 years in the county office is riveted with  
14 election day registration. And certainly on election  
15 day in those EDR states is moving that whole decision  
16 making process to election day. And one of the slides  
17 that you were showing is training between the poll  
18 workers makes a big difference, I can assure you that  
19 makes a huge difference when you are a EDR state. So my  
20 question is based in the thought that perhaps perhaps  
21 things to be learned from EDR states that could improve  
22 the provisional ballot process.

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1 MS. HODGKINS: Mr. Lomax?

2 MR. LOMAX: Harvey Lomax, Clark county,  
3 Nevada.

4 I guess your sources of variation you listed  
5 is the experience of the state and how long a time the  
6 state has given to resolve the provisional ballot. Yet  
7 I would suggest kind of piggy backing on what Howard  
8 said that the laws of the state-- if you take the laws  
9 of California and Nevada and look at the laws of who  
10 past the provisional ballot. They drive (sic) more the  
11 number of provisional ballots cast, how long it takes  
12 to resolve those issues and how many are going to be

13 excepted. And most of that has to do with how people  
14 changes in address and if you allow changes in address  
15 up to the last minute.

16 In Nevada for instance no changes in address  
17 are allowed. So all we are dealing with are they  
18 registered or are they not registered. That's pretty  
19 much it. So it doesn't take us as long. And you're  
20 going to have a much higher rejection rate.

21 Just on the side a different issue. I can  
22 also speak loud and clear not all voters who show up

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1 and attest that they are registered voters even begin  
2 to qualify. In Nevada a high tourism state down there  
3 in Las Vegas in the 2004 elections we had people from  
4 all over the country insisting they had a right to vote  
5 in Nevada. And we let them vote provisionally and we  
6 didn't count them.

7 MR. FOLEY: And we are by no means suggesting  
8 that provisional votes should be counted if in fact the  
9 provisional voter was not properly registered voter.  
10 And in fact one of the problems that occurred in the  
11 state of Washington was the erroneous inclusion of  
12 provisional voters, of some provisional ballots in the  
13 final certified total that should not have been  
14 included. They were included prior to the evaluation



15 process. So there are two possible errors. There is the  
16 exclusion of one that should have been validated. And  
17 the other kind of error is the inclusion of those that  
18 should not have been validated. In a well designed  
19 system we try to minimize both types of error.

20 MR. O'NEILL: Let me supplement that a little  
21 bit.

22 I think what is driving our recommendation is

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1 anybody that comes in and affirms that he or she is  
2 registered and eligible to get a provisional ballot is  
3 driven by the pressures on the poll workers on election  
4 day. And we gladly not see those poll workers time  
5 taken up by sort of a quasi traditional process in  
6 deciding whether any particular voter really deserves a  
7 provisional ballot. Everybody should get it and sort  
8 out later when you have a matter of weeks rather than  
9 matter of hours. That is the burden of our argument.

10 MS. HODGKINS: The gentleman in the blue  
11 shirt?

12 MR. TERWILLIGER: Bob Terwilliger from the  
13 state of Washington.

14 I hear categorizations of states by the way  
15 the they verify (inaudible) the ballot. You talk about  
16 a voters affidavit and current ID as if they exclusive.  
17 In the state of Washington we actually use three. To

18 determine whether or not they get a mechanical ballot.  
19 The only thing we don't have is to return with your  
20 ID. If we have an affidavit on the envelope we check  
21 the signature. We also verify that he or she is an  
22 actual registered voter which to is three of the four

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1 that you list there.

2 MR. O'NEILL: We will clarify that.

3 MR. MILLER: Paul Miller also from the state  
4 of Washington.

5 And I was interested in your comments about  
6 going back and checking against the actual original  
7 registration card for a couple of reasons.

8 One the practical administration implications  
9 of that. And two because you cited Washington state  
10 specifically in regards to that. And I think that there  
11 may be possibly some misunderstanding as to what came  
12 out of the 2004 gubernatorial election in that regards.

13 First of all as a practical matter what I  
14 understand you to say is we ought to be going back and  
15 checking all of our voter registration cards to make  
16 sure we didn't inadvertently miss one or more.  
17 Obviously in King County where they have 1.2 million  
18 registered voters, as an administrative matter that is  
19 an impossibility.

20 Two, what I am understanding you to refer to  
 21 actually is a little more complex; but, raises some  
 22 additional questions I think you might want to

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1 investigate in your survey which is what can be  
 2 remedied in voters registration when either the  
 3 provisional affidavit is incomplete or when the  
 4 original voter registration form is incomplete. If the  
 5 person, for example, didn't sign the voter registration  
 6 form they can't be made inactive registered voter. Can  
 7 that be remedied with a provisional ballot and a  
 8 signature verification if the address was an invalid  
 9 address and couldn't be precincted can we give them a  
 10 provisional ballot? Those are some of the kinds of  
 11 issues that did come out and we were forced, in  
 12 Washington, to clarify those kinds of questions.

13 MR. FOLEY: Those are really important  
 14 questions. And absolutely that's where clarify is the  
 15 primary value. It's much more important to have an  
 16 answer to that question ahead of time that it matters  
 17 what the answer is. So if the issue is a missing  
 18 address we should ahead of time what the consequences  
 19 of that missing address is. It either counts or it  
 20 won't count. But at least you know the rule ahead of  
 21 time So I absolutely agree with that.

22 MR. O'NEILL: And I believe the court case  
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1 you are referring to is the Judge ordered King County  
2 to seek signatures for provisional when they hadn't  
3 signed the provisional ballot. That's my understanding  
4 of the decision in that case. My guess is that was the  
5 court case you were referring to.

6 MR. FOLEY: Well there were multiple cases as  
7 you know. And one piece of good news on this I do  
8 think the HAVA requirement of statewide centralized  
9 voter registration data bases will help because I think  
10 a well designed data base will always archive any  
11 retained historical records with respect to registered  
12 voter. In the event of a purge or in the event of some  
13 action on that registered voter you can go back and  
14 archive the history. And that will minimize to a  
15 considerable degree issues about the validity of the  
16 status should they arise in the context of a  
17 provisional ballot.

18 But there is still a question of the point of  
19 intake question. In other words until you get that  
20 registrant within the system, in the centralized data  
21 base there is a gap and we have seen it. It is not just  
22 in Washington. There are gaps in terms of forms

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1 delivered to DMV that are not transferred timely to the  
2 Board of Elections, who bears the burden of that risk?  
3 Of course there is a different burden of risk if the  
4 form is delivered to one of the third party groups. And  
5 they make a mistake. I am not saying that all risks  
6 should be borne by the state. Some risk should be borne  
7 by the voters. Some risks maybe should be borne by the  
8 system. But the most important issue is to clarify  
9 ahead of time is who bears the risk of a missed form,  
10 and under what circumstances?

11 MS. HODGKINS: The gentleman in the back and  
12 then we will go to Mr. McCormack .

13 REGIS YOUNG: Regis Young from Pennsylvania.  
14 You made several points about educating the  
15 polls workers throughout your presentation. But nowhere  
16 did you mention educating the news media. I am  
17 following up on what Howard mentioned before especially  
18 in Pennsylvania in 2004 the news media kind of took  
19 over our election by advertising and saying it doesn't  
20 matter if you're registered or not just go vote. It  
21 doesn't matter where you live just go vote to your  
22 nearest polling place. And I was wondering did you

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1 gather any statistics on your survey in Pennsylvania?  
2 we had a low percentage of counting the provisional  
3 ballots because of that. It was too late for us to get  
4 to the the news media to change.

5 I think it should be noted that on the  
6 national level the news media should be trained right  
7 down to the local newspapers.

8 MR. O'NEILL: They usually resist training .

9 MS. HODGKINS: Okay. Mr. Lindback and then  
10 Secretary Markowitz.

11 MR. LINDBACK: John Lindback, I am Director  
12 of Elections in Oregon.

13 You know we are one of those odd ball states  
14 where we do things very differently and it effects your  
15 study I am sure. One of those states that make you rip  
16 your hair out.

17 One of the things we found with  
18 implementation of state wide voter registration program  
19 is in a primary election last week is it appears that  
20 the number of provisional ballots went dramatically  
21 down because of our statewide voter registration  
22 system. It sort of strikes me that your research team

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1 lists us as a moving target in regards to the dynamics  
2 of elections changing in this country. And I sympathize  
3 with. And I am wondering if you could go back for a  
4 second to your slide on your quality improvement  
5 program because I have a question about that.

6 MR. O'NEILL: Tell me when.

7 MR. LINDBACK: That one. As election officials  
8 we get told we ought to do a lot of things. And in fact  
9 I have gotten kind of used to it. Ever since 2000 we  
10 have to do this and we have to do that we have to do a  
11 lot of things that are very good ideas. Rarely do we  
12 get a suggestion are we told how to do it. And a cost  
13 effective in a efficient way. And I am looking  
14 specifically for example at time required to evaluate  
15 ballots by jurisdiction.

16 When we get into that level of detail and  
17 data collection I need to hire a full time person to  
18 collect that data at election time. I don't have the  
19 budget to do that or the resources to do it and that  
20 kind of thing.

21 I think we are appreciated as election  
22 officials when folks from the academic world do studies

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1 and make recommendations. We don't only need  
2 recommendations on what we ought to do as to how we  
3 ought to do it and how we can do it in a cost effective

4 and efficient way. I think if you folks would look at  
5 that specifically with request to these four  
6 suggestions because to me they look expensive and  
7 overwhelming in some respects when we are trying to  
8 collect the data.

9           MR. FOLEY: I hope we were sensitive to that.  
10 we tried to be, maybe not sufficiently, but we wrestled  
11 with the notion of trying get specific. And there are  
12 downsides to getting too specific on some of these  
13 issues, particularly as to what date should this be  
14 done by. It also relates to a larger theme which I  
15 theme which I as an academic.

16           I think requires a dialogue between people  
17 who are implementing election law in practice as  
18 administrators and then people who are studying it. And  
19 a real genuine back and forth ongoing dynamic dialogue  
20 because what would it take to build an optimal  
21 provisional voting system is not an easy task just in  
22 terms of identifying the values. And there are trade

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1 off values, there is a trade off between accuracy and  
2 finality not to mention not to mention budgets and  
3 expenses. And I think it is unfair to election  
4 officials that the media in particular and public  
5 rhetoric demands more than is achievable. It is sort of



6 an expectation that the system is going to be perfect  
7 that provisional voting is going to be that automatic  
8 fail safe.

9 I think one of the education functions that  
10 hopefully the EAC can play given its public profile is  
11 that there needs to be more sophisticated  
12 understanding that a well designed system can't promise  
13 too much. And it can work without the-- cars, you know  
14 well designed cars sometimes break down but we don't  
15 think the car was poorly designed because you have to  
16 take it to the shop every few years. And it may be that  
17 a well designed election system, you know, is still  
18 well designed it still functions appropriately given  
19 the budget and so forth even though it has glitches  
20 here and there.

21 I don't think the public is not quite at that  
22 point in the conversation, and hopefully our process

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1 and the EAC can help with that understanding.

2 MR. O'NEILL: We agree with the thrust of  
3 your comments I believe somewhere in here we have a  
4 bullet point that calls for an assessment of cost  
5 effectiveness of the kinds of regulations you set up to  
6 improve and evaluate provisional ballots.

7 You will find also here a specific reference  
8 to the check list that has been using, Colorado to

9 record the reasons provisional ballots were not  
10 excepted with a simple three letter code and will allow  
11 you to go back at the end of the election and process  
12 and evaluate why persons are getting into the  
13 provisional ballot line and why they are failing to  
14 have their ballots evaluated and counted. It will give  
15 you a check on the functioning of many parts of the  
16 system.

17           And many of these pieces of information are  
18 collected for other purposes. You know how many  
19 provisional ballots are cast. You know how many are  
20 counted. But they are not necessarily compiled in a way  
21 that allows you to analyze the data at leisure once  
22 the election is over. So in general what we are calling

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1 for is using the data for two purposes; to call the  
2 election and after it is all over to analyze why the  
3 system worked the way it did in that particular  
4 election. Your right it is a moving target and each  
5 year will be a little different.

6           MS. HODGKINS; Secretary Markowitz? And Adam  
7 if you wouldn't mind the gentleman on the front row  
8 will be next and secretary Ruggiero will have the last  
9 word.

10           MS. MARKOWITZ: Secretary of State, Deborah

11 Markowitz from Vermont.

12 I like to go back to the comments from  
13 Delaware. As you continue to study this issue you look  
14 at what the goal of provisional balloting is and then  
15 evaluate how it is working state by state. Vermont is  
16 your lowest participant in provisional voting and  
17 that's because our-- we actually do something better  
18 than that like Delaware where we have affidavit voting.  
19 So somebody comes in-- and we have a terrible problem  
20 with motor voter, and I don't know about the rest of  
21 the other states, but routinely there are thousands of  
22 people who never make it on the voter rolls because

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1 those registration forms aren't filled out correctly  
2 and don't get to us or don't get to the right place and  
3 really, in most cases, through no fault of the voter.  
4 So for many years and we are called an old state with  
5 provisional balloting and we have resolved by allowing  
6 somebody to swear or affirm that they were registered  
7 and we simply add them to the check list on election  
8 day and allow them to vote.

9 In Vermont provisional voting is reflected in  
10 two things: One was town clerks or election officials  
11 who misunderstood provisional voting and used it  
12 instead of the activating list and we should have a  
13 lower number than that. Or there were people from

14 Connecticut who come to Vermont and think they have a  
15 right to vote in any polling place because they are  
16 Americans. So we should say that we have something  
17 better that allows them to have an actual ballot.

18 MR. FOLEY: Oh, absolutely. Like Tom said and  
19 I will definitely repeat. A large number of provisional  
20 ballots cast in a jurisdiction is by no means  
21 necessarily a good thing. And a large number of  
22 provisional ballots counted is not necessarily a good

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1 thing because maybe those folks should have gotten an  
2 actual ballot in the first place, if it was determined  
3 that they were registered voters why weren't they  
4 voting a regular ballot.

5 Now, again, a fire extinguisher is good. It  
6 is good to have safety measures. It is good to have  
7 fire extinguisher if there is a fire that you have to  
8 put out. It would be nice to avoid the first in the  
9 first place. And some of the academic research that we  
10 drew upon was efforts to have improvements in  
11 registration systems that would avoid the need for  
12 provisional voting and put less stress on the on  
13 provisional voting precisely because provisional voting  
14 is after election day when the litigants want to gain  
15 the system. In other words in a post election

16 environment there is inevitably going to be extra  
17 stress if the election is close. So it would be much,  
18 much better if you could reduce the number of  
19 provisional ballots cast and have those be actual  
20 ballots if that is a feasible thing. So that's why we  
21 talk about the relationship between the provisional  
22 voting system as a subsystem, with the data bases

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1 another subsystem. It is an important component and it  
2 is provided by HAVA and it is good to have fire  
3 extinguishes. But one needs and overall assessment of  
4 the totality of the states election system really to be  
5 able to evaluate its component that is provisional  
6 voting.

7 MR. BLEVINS: Don Blevins, Lexington,  
8 Kentucky. I have got a couple of things.

9 Number one you say that everybody should get  
10 a provisional ballot. And the application, if we decide  
11 to put it in place, is not a good thing. We only allow  
12 a provisional ballot for federal elections only. And  
13 given that there is no such thing really as a federal  
14 election. There is an election day in America where we  
15 elect officers of a all levels of government including  
16 six cities where half a dozen people get together and  
17 decide they want to have a little city. So for those of  
18 us who administer elections on the local level we have

19 to absorb the entire scheme of officers and issues that  
20 are on the ballot. So in our state the way we put it in  
21 place in a perfect situation we would never count a  
22 provisional ballot. We have it orchestrated so that

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1 that truly is a last resort. On the other hand we want  
2 the voters to be able to vote in all election issues  
3 and races that they are eligible to vote in. And when  
4 they choose the provisional ballot route they have  
5 opted out of that. So that is not necessarily the best  
6 route to go.

7           We have a statewide data base. We have had it  
8 for a long time. We have a leg up on the states that  
9 don't have that. And we have a telecommunications  
10 system that allows us check the registration. The size  
11 of the population of the state plays a roll we have  
12 four million people, two million registered voters.  
13 They top that in Los Angeles county in California. So I  
14 can tell you from my administration we would have to  
15 look at this in a different context by virtue of sheer  
16 volume.

17           The second thing I want to point out to you  
18 is that I think the biggest over simplification that  
19 was in HAVA was this idea that we are not training poll  
20 workers well enough. Or we are not training the public

21 well enough. I don't think the federal government has  
22 got enough money to train the electorate out there on

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1 how to do this voting. So the burden of the election on  
2 the county. When people talk about.

3           Educating poll workers I hear what I think  
4 must be a two, three or four day training session. And  
5 you're lucky if you get them in for 30, 40 minutes.  
6 They have the attention span of a kindergartner. So  
7 this is over glorified and under appreciated that these  
8 poll workers are volunteers and get paid poorly. And  
9 until there is some heat built up on the state to put  
10 up more money poll workers were are we going to get  
11 that?

12           Another thing that HAVA wants is we are  
13 supposed to teach them a sensitivity about disabled. We  
14 are supposed to teach them about provisional ballots.  
15 We have to teach them about state law and all this. You  
16 know, I don't know about anybody else but we get a them  
17 for two hours we have performed a miracle. So this idea  
18 of training being the answer to everything I think you  
19 are going to find between academics and practice there  
20 is a big over simplification difference.

21           MR. FOLEY: I think we are very much in the  
22 arena because it is because of that complexity and

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1 difficulty that out point about the practical rule of  
2 thumb is to give them a provisional ballot. And I  
3 stress that is when the poll workers are in a position  
4 to say I am in a position were I can not give this  
5 voter standing in front of me, or a would be voter, a  
6 regular ballot. Something has caused me to make the  
7 determination that they can't vote a regular ballot.  
8 They are not on my list; they don't have the right ID  
9 whatever. If at that point the voter says I don't want  
10 to go home empty handed I would like to vote a  
11 provisional ballot because I believe I am eligible it  
12 is at that point that our recommendation is don't take  
13 time to worry about that. You have too much on your  
14 mind poll worker. At that point you know you're not  
15 going to let them in the regular booth or regular  
16 ballot give them a provisional ballot. So it is not  
17 giving them a provisional ballot instead of letting  
18 them vote regularly. That is not an issue.

19 MR. O'NEILL: I did not follow one part of  
20 your comment, maybe you can straighten it out for me.  
21 You said you don't like the issue of the provisional  
22 ballot in Kentucky. And if you do the person who get it



1 doesn't get to vote in a local election. That's the  
2 part I didn't understand.

3 MR. BLEVINS: We chose to make the  
4 provisional ballot only for federal elections. We went  
5 with HAVA in that regard that it only applied to  
6 federal elections.

7 MR. O'NEILL: I understand. Thank you.

8 MR. BLEVINS: And we did that for several  
9 reasons that may not make a lot sense here. Voter  
10 fraud, and vote ban and those sort of things.

11 MR. O'NEILL: You're talking to someone from  
12 New Jersey.

13 MS. HODGKINS: Thank you Mr. Blevins.  
14 Secretary Rokita.

15 MR. ROKITA; I have a couple comments and a  
16 couple of questions if you can bear with me.

17 First of all for the record I also agree that  
18 there is much more relationship between this subject  
19 and ERA than to your research currently. And I would  
20 suggest doing a little more research in that regard.  
21 For example when EAC requires that full service  
22 agencies to continue to accept voter registrations it's

1 a great thing. But you're also at the same time right  
2 after the election and if you would the election coming  
3 up after registering it might be driving more people to  
4 the polling place like NVRA requires only to have them  
5 cast a provisional ballot because the registrant won't  
6 let us pass. So issues like that I think might be  
7 right for some of your discussions.

8           what data point did you specifically come up  
9 to conclude that if someone is in the right polling  
10 site, all be it not the right precinct, that their  
11 ballot should count?

12           MR. FOLEY: It was a core decision, correct.

13           MR. ROKITA: I understand. Just for example a  
14 photo ID, I will use that as an example, are you saying  
15 that there is a causal effect between the time allowed  
16 to count a provisional ballot and the rate-- are you  
17 saying there is a causal effect and the rate of  
18 counting that provisional ballot and voter ID are you  
19 saying it causal?

20           MR. FOLEY: No. We found correlation if you  
21 will, I don't have the time but I could go into this  
22 more. But I don't think we are making a finding on

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1 causation.

2 MR. ROKITA: Well, if it is not causal I  
3 guess my point would be, so you can respond, what value  
4 is it to be in this report?

5 MR. O'NEILL: The existence of the correlation  
6 between having less time to evaluate ballots and with  
7 fewer ballots being excepted it is an indication to us  
8 that something is going on. We don't know exactly  
9 whether it is causative or merely highly correlated.  
10 But whatever it is it makes it worth while looking at  
11 the time period allowed to evaluate ballots and try to  
12 figure out if it is causing it. And you can do that  
13 for instance by finding out are there a bunch of  
14 ballots that you never got to at the end of the  
15 process, the process was only three days long. It is  
16 worthy of further investigation.

17 My own suspicion is that the arrow of  
18 causality does flow that way but it is only a  
19 suspicion.

20 MR. FOLEY: And there would be reasons to  
21 look at the timing issue even if that data didn't  
22 exist. I mean it maybe anecdotal but I mean I keep

1 referring to Washington but half of the Washington  
2 governor's race the process for evaluating the ballots  
3 shut down on the same date in 2004 as a matter of state  
4 law that the federal Supreme Court in Bush vs. Gore

5 shut down the counting process in 2000, the current  
6 governor would be a different incumbent. So the fact  
7 that the the process took longer than the five weeks  
8 that federal law allows for Presidential elections  
9 shows that timing can be outcome determinative.

10           And I simply wanted to share that knowledge  
11 with all of you as you determine for your own races  
12 what is the appropriate time table to utilize before  
13 bringing the process to conclusion.

14           MR. O'NEILL: And my recommendation for the  
15 EAC is that they be very careful with this research  
16 where things are not causal or currently suspicions that  
17 we say that.

18           I think at the outset with some of these  
19 subjects, and I am usually the first on up to bat, but  
20 some of the other subjects that we are going to deal  
21 with maybe the same way, maybe not. But these issues  
22 these themes are not conducive to very easy data

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1 gathering. I must have said that ten times here. And  
2 maybe it has to stop right there or slow down right  
3 there. Maybe there is value in just saying that, rather  
4 than try to fit a square peg in a round hole where  
5 these potential conclusions or these correlations that  
6 you're saying could be taken by the public as

7 conclusion or causality when there really is none.

8 MS. HODGKINS: Thank you. Mr. Martinez, we  
9 do apologize for running this session over time but--

10 MR. MARTINEZ: That was great. We were looking  
11 for the kind of discussion we had today. It's very  
12 valuable to us. We are on the record and we can come  
13 back and really consider the comments. We really do  
14 appreciate them all and are looking for this kind of  
15 discussion.

16 I am speaking for myself and not the EAC in  
17 saying this I think there is strong sentiment at the  
18 EAC, at least from my perspective, to evaluate in very  
19 sound and deliberative manner, Mr. Secretary, the kinds  
20 of reports of reports that were presented to you.

21 Keep in mind these reports are from our  
22 consultants to the EAC and we are sharing them with

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1 you. These were not EAC reports that we have adopted  
2 and are presenting to you for final analysis.

3 There is a complete difference in those areas  
4 and that's why we took these extremely important steps  
5 to show you what the consultants have brought to us and  
6 sharing it with you at this stage in the development so  
7 we can then honor that importance to deliberate and  
8 contemplate very thoroughly before we embrace whether  
9 it is voluntary guidance or best practices. So we are

10 very much in that period. I encourage it for the rest  
11 of the discussions we are going to discuss.

12 All right. We are going to take a quick  
13 break our next topic will be Research on Poll worker  
14 Recruitment.

15 Madam Chair, it is 4:20 and I am calling for  
16 a 15 minutes break or so. Reassemble in 15 minutes,  
17 please.

18 (Recess taken at 4:20 p.m., and reconvened at  
19 4:40).

20 MR. MARTINEZ: We are starting again. We have  
21 one more session left. I know it has been a long  
22 afternoon full of a lot of information. We have one

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1 session left for today and tomorrow we will hit you  
2 again with a long session.

3 what we are going to do today is give you a  
4 presentation regarding another one of our contracted  
5 research projects and that is pertaining to poll worker  
6 recruitment, training and retention for poll workers  
7 who are generally used at the polls but targeted  
8 specifically as well to college poll workers, to the  
9 population of college poll workers.

10 we have a couple of consultants that we have  
11 hired that have done some tremendous work and want to

12 share the results of that work.

13           what I am going to do is ask Karen Lynn Dyson  
14 who we all heard before. She is our project research  
15 manager at the EAC and has been with us for quite some  
16 time now to stand up and give us a quick introduction  
17 of our project consultants and anything else she might  
18 want to say.

19           However I forgot I am supposed to recognize  
20 your chair, Peggy Nighswonger who wants to give you a  
21 quick piece of information, Madam Chair .

22           MS. NIGHSWONGER: Okay. I am just going to

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1 tell you that 66 ballots were counted successfully. So  
2 please welcome Tonni as our new Executive Director.

3           We are leaving right after this session.

4           MR. MARTINEZ: Congratulations. Karen  
5 Lynn-Dyson will make the introductions and we will get  
6 to the last presentation of the afternoon.

7           MS. LYNN-DYSON: Commissioner Martinez just  
8 mentioned that I have been with the EAC for some time  
9 and I could swear either he said or Chairman Boyer  
10 said I have been here for years. He said a lifetime.

11           I am pleased to introduce two of our  
12 contractors Abby Horn who is to my immediate right. And  
13 Abbey is the Assistant Director for the Center for  
14 Election Integrity at Cleveland State University. Abby

15 leads the Center as Acting Assistant Director and she  
16 came to the Center as a democracy for the United States  
17 for International Development and did a lot of work  
18 all over the world, primarily in Central America related  
19 to democracy and citizenship.

20           The Center for Election Integrity at  
21 Cleveland State University is a partnership of the  
22 Cleveland Marshall of Law and the Massey, Goodman,

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1 Levine College of Urban Affairs. She draws upon the  
2 long standing expertise from those colleges in  
3 electoral and regulatory law, public education and  
4 civic education the Center for Election Integrity  
5 provides research, training consultation to assist  
6 Ohio in becoming a national leader in transparent,  
7 legal, efficient and accurate elections. It is three  
8 organizations dedicated to three interconnected  
9 missions: To assist Ohio in becoming the national  
10 leader in elections; to help assure the citizens trust  
11 that their elections are fair, lawful and accurate and  
12 to undertake scholarly studies and offer  
13 recommendations on election administration and legal  
14 reform at the state, local and international level.

15           Again Abby is overseeing the Cleveland  
16 State's efforts related to college poll worker



17 recruitment and training and retention.  
18 Jennifer Collins-Foley to Abby's right is an  
19 attorney who has provided democracy development around  
20 the world since 1989 working with election  
21 administrators, civic organizations and politic  
22 parties in the former Soviet Union, Central Asia and

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1 the Middle East.  
2 Jennifer has served in the Elections  
3 Administration Community since 1996, spending seven  
4 years as Assistant Registrar of Voters of LA County.  
5 She now serves as an Election Administration  
6 Consultant. And has worked in recent years with us and  
7 on this project with IFES. And IFES for those of you  
8 who don't know was established in 1987 as a non  
9 governmental, non partisan, non profit organization.  
10 IFES has provided assistance to current elections, the  
11 rule of law, civil society and good government in more  
12 than a hundred countries including the US.  
13 IFES is headquartered in Washington with  
14 offices in nearly 30 countries and it specializes in  
15 technical assessments, poll worker training programs  
16 technical observations, election commission management  
17 reviews and election equipment and commodities  
18 procurement systems.  
19 IFES is the contractor for the Elections

20 Assistance Commission is doing work on the general  
21 poll worker recruitment and training and retention  
22 project. So with that I am going to turn it over to

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1 Jennifer who is going to make her presentation that  
2 will last for about 15 minutes. And then Abby will go  
3 for about 15 minutes. And then I will open it up for  
4 questions. Thank you

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6 RESEARCH ON POLL WORKER RECRUITMENT AND  
7 RETENTION (INCLUDING COLLEGE POLL WORKERS)

8

9 Presenters: Jennifer Collins-Foley, IFES.

10 Abby Horn, Cleveland State University

11 Karen Lynn-Dyson, EAC.

12 MS. COLLINS-FOLEY: First off I want to say  
13 it is an honor it is to work on this project because I  
14 am a self proclaimed poll geek. And to be part of a  
15 team that gets to look at these issues for 15 months  
16 and actually get paid for it. And talk to hundreds of  
17 election places across the country it's really neat.  
18 And I have been having a lot of fun with it.

19 went over a little bit of where the project  
20 came from, of course it stems from a Help America Vote  
21 Act that is such an important program and is the heart

22 of successful elections.

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1           We were awarded this project in September  
2 2005 and it goes until the end of this year 2006, a  
3 fifteen month applied research project.

4           We are working under IFES, International  
5 Foundation Election Systems, and it has been terrific  
6 working with them. It is a fantastic international  
7 program offering technical systems to jurisdictions in  
8 the US, and visa versa offering models from the US to  
9 international partners.

10           I am President of an organization called the  
11 Poll Worker Institute which is a relatively new non  
12 profit focusing on poll worker issues in the US, and we  
13 have a Board that is quite active. Conny McCormack is  
14 on the Board; Beverly Kauffman from Harris County  
15 Texas and Lynn Shadman from Washington D.C. And we  
16 are also very fortunate to have the League of Women  
17 voters working on this project as well. I don't have to  
18 introduce the League I guess.

19           What we have been working on these past 13  
20 months is we have been partners with Cleveland State  
21 University to compile 50 state laws as they apply to  
22 poll workers to compile field tested practices in poll

1 worker recruiting, training and retention. We pulled  
2 together a working group to give us guidance over the  
3 course of this program.

4           We conducted some focus groups with the  
5 League of Women Voters project earlier this year. We  
6 are developing a how to practical guide book which we  
7 will talk about in a few minutes. And I hope you have  
8 the job table of contents that was supposed to have  
9 been distributed to you earlier today. We will be  
10 conducting some pilot projects to test the guidebook.

11           I won't go too much into the compilation of  
12 state laws because Abby is going to talk about that  
13 more in a bit.

14           The three things we found really impacted the  
15 ability to have innovative poll worker programs were  
16 age requirement, obviously if you want to bring high  
17 school or college students in that can sometimes can be  
18 an impediment. Residency requirement become an issue if  
19 the poll worker can only serve in that precinct. They  
20 can start more innovative programs like corporate or  
21 college. And being required to be nominated by your  
22 political party can also achieve programs that are a

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1 little more out of the box.

2           We were very fortunate to partner with the  
3 National Association of Counties. They were going to do  
4 an intensive survey of counties on poll worker  
5 practices. So we worked with them to have their survey  
6 be as helpful to us as it could be in terms of  
7 collecting practices. We also went to some fabulous  
8 programs or collection of practices that had been put  
9 together by NEMS, by NASED, by IACREAT, the Election  
10 Center and the EAC. So we began pulling together  
11 practices that we thought were bordering on  
12 successful. Some of them were not so successful,  
13 bordering on best practices but certainly in the  
14 successful realm. Early on we started pulling together  
15 our guidebook and then of course together with NECO  
16 Survey we were thrilled that we got three hundred  
17 responses out of three thousand counties,.

18           Before I was in this project I used to think  
19 a ten percent response rate that is terrible. But that  
20 is really good when you are doing research. And our  
21 research people was thrilled with that. And of course  
22 it has given us fabulous stuff to work from. So we are

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1 going to be putting out some results soon. And it is  
2 going to be great on who is doing what kinds of  
3 practices; who doing what kind recruiting. We also  
4 pulled together a great working group to guide us  
5 through the projects. I should have mentioned earlier  
6 IFES and the poll workers we pulled together were a  
7 terrific group for consultants to work on this project.  
8 All retired or current election officials who really  
9 had some field tested practices to share.

10           And on our working group we had State  
11 Election Directors, two local election directors from  
12 large and small jurisdictions from from large and small  
13 jurisdictions, Academic advisor a research advisor, an  
14 adult learning advisor and a training expert form the  
15 private sector. So we really were able to pull together  
16 some good folks to help us look at whether these  
17 programs we were compiling really are successful. We  
18 also were fortunate to have advocates from the multi  
19 lingual and Voters with Disabilities community.

20           We have tried to call in as many (inaudible)  
21 as we can in addition to the NECO survey we are really  
22 trying to find out what is going on out there and

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1 pulling in some practices, and our working group  
2 pulling some information from them. We also pulled

3 together a round table with volunteers. Not all of us  
4 consider poll workers volunteers, in some places they  
5 do.

6           They gave us some pretty good thoughts on  
7 when you are working with volunteers apparently there  
8 is a growing trend in what we call episodic volunteers  
9 which means you get all your volunteering done in one  
10 big chunk. So really you would think that poll workers  
11 would follow that trend.

12           All you need to do is ask. And they said if  
13 you don't mind us telling you, your election officials  
14 don't ask the right questions if you're really going  
15 coworkers as volunteers. Uncle Sam needs you they tell  
16 us is a bomb. They advised us to think more about your  
17 community needs you on election day to serve in this  
18 place and this is what you are going to be doing. They  
19 said the more specific the request the better. So  
20 you're going to hear feedback from people who, like the  
21 the Points of Light Foundation, people who are really  
22 in the field of volunteerism.

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1           we talked to and interviewed training  
2 experts. A lot of you know Ray Hawkins and Robert  
3 Lovejoy (sic) absolute opinion leaders in the field.  
4 They gave us some terrific feed back. We had voters  
5 with Disability round table talk about some practices

6 on recruiting poll workers with disabilities. And also  
7 some pieces that are going to go in our guidebook that  
8 are really good for sensitivity training. Getting your  
9 poll workers to go out there and, you know, really make  
10 polls set up the best way to accommodate these folks.

11           The League of Women Voters in an amazing two  
12 or three month period did 19 focus groups in 17  
13 jurisdictions. Obviously they were trying to compile  
14 strategies and also to underscore some potential pit  
15 falls. They came back with some shocking survey  
16 analysis which is that election officials do work on  
17 shoe string budgets. I was amazed to know that. They  
18 also said that election officials had limited staff,  
19 and also that the election environment system  
20 historically had little need for change. Those of you  
21 or started transitioning from punch card voting back in  
22 the 60's will welcome the change. I am not supposed to

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1 side with the focus group results.

2           Now some current reasons for change include a  
3 course of Help America Vote Act, bringing in new  
4 technology that will have big impacts on poll workers.  
5 The increase of public scrutiny of election  
6 administrators obviously we all under the microscope  
7 now. And that means our poll workers are under the



8 microscope. Razor thin margins of electoral victories  
9 in recent elections. Obviously the candidates know who  
10 their voters are, and if they loose it must be our  
11 fault, or the poll workers fault. And finally the  
12 anticipated demographic changes that have served as  
13 agents for change. And this is everything from  
14 increasing needs to have more bilingual poll workers  
15 that kind of thing. So lots of change going on there.

16           The most common recruiting practices include  
17 word of mouth, personal networks, referrals, more  
18 people are paying more money. Lead poll workers in some  
19 places are selecting their own team. And some other  
20 very common recruiting practices, flyers, posters,  
21 adds. Check boxes on voter registration forms. This is  
22 traditionally you put something out there as an

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1 election official and the voter, the potential poll  
2 worker contacts you.

3           Some of the more innovative recruiting  
4 methods are were you find the partner and the partner  
5 gets you your poll workers and gets you-- instead of  
6 one poll worker they get you multiple poll workers.  
7 These program include what we call county poll worker  
8 programs, also called governmental private sector, also  
9 called corporate poll worker programs, high school  
10 college student programs, civic organization programs

11 and bilingual poll worker programs.

12           One thing that came out of the focus groups  
13 is that it is generally more difficult to recruit poll  
14 workers from lower income areas and very wealthy areas.  
15 And for those of you who have read or will read our  
16 guidebook you will see that the chapter that says:"Tips  
17 for Recruiting Poll Workers in Low Income Areas" is  
18 blank. And that's because we actually haven't found  
19 very many good tips. We have spoken to literally dozens  
20 of election officials in low income areas, that have to  
21 recruit for low income areas including me in Los  
22 Angeles, and we are drawing a blank. There really are

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1 not too many successful tips. We are getting there. We  
2 are talking to churches. If anybody has any ideas I am  
3 listening so please do let me know. Another thing that  
4 the focus group found is it is especially difficult to  
5 get technological savvy poll workers in economically  
6 disadvantaged areas.

7           When we put this in our guidebook we are  
8 going to say: "well, you have two choices you can kill  
9 yourself trying to find tech savvy people in those  
10 precincts or you shut them down" . So our guidebook we  
11 are really trying to be very practical.

12           Strategies that met with mixed results

13 included recruiting a partnership of political parties.  
14 Obviously there are practices out there of how many  
15 have this in their state law that you have to work with  
16 political parties. And the reality is that election  
17 officials have told us that this is mostly a bomb. Very  
18 few election officials have said: " Oh this is a  
19 fabulous recruiting technique." Most people have said  
20 this is the biggest pain in the neck ever. The people  
21 we get we can't place them, they are dead by the time--  
22 I mean no disrespect. I mean very mixed results on this

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1 particular type of recruiting. Offering split shifts  
2 is another thing we found. First thing a voter on the  
3 street, a potential poll worker will say: "well if I  
4 was offered split shifts I would be glad to do it."  
5 Then they find out that you-- that they have to find  
6 their partner because Hello we are not going to find  
7 their partner for them on the split shift and they  
8 quit. Or they say: "Do I have to share my stipend?  
9 There is no way I am doing that." So you know the  
10 perception is okay if we just this practice everything  
11 will be great. The reality is a little different. And  
12 our guidebook goes into some of these nuances.

13                   And one things that has become a kind of  
14 undertone of our whole project is that there is, you  
15 know, strategies that give you the balmies (sic). Like

16 you know we always talk laughingly about the breathing  
17 test. If they are breathing we will hire them. And  
18 those strategies really go by the wayside in the time  
19 when we are using new technologies and we are under the  
20 microscope and there are all these tight elections. We  
21 really need to be working on strategies that provide  
22 the best poll poll workers not just enough poll

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1 workers.

2           Some successful messages that the League came  
3 back with from their focus groups are based on the  
4 person you ask you need to ask is it a family; is it a  
5 neighbor is it somebody calling person to person asking  
6 some kind of connection. The more specific you can be  
7 the better. And stress the benefit to the community.

8           Key findings on poll worker training. We  
9 found that in the focus groups and also in the NECO  
10 (sic) survey and also in talking to literally hundreds  
11 of election workers across the country there is a trend  
12 from moving away from talking head training more to  
13 hands on roll playing, setting up a full poll worker  
14 station, a full mock polling place and the training and  
15 allowing as much hands on as possible. And one  
16 interesting thing that we found in both the survey and  
17 the focus groups is that paying poll workers to attend

18 training dramatically increases the people who turn out  
19 for your training programs.

20 I am going to read this because I think it is  
21 important: " The most important theme is--" You're  
22 supposed to read from your power point." That is one

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1 of the things that we learned when we were just  
2 developing our conflict chapter in the manual. You're  
3 not supposed to read from your manual but it is a good  
4 quote you are allowed to. "The most important thing to  
5 arise from the discussions of all the state holders is  
6 there is no magic bullet. There is not a one size fits  
7 all solutions for every jurisdiction or for reaching  
8 out to every population. Election officials must  
9 experiment to find the right balance for their  
10 jurisdictions needs." I am sure that does not surprise  
11 any of you. We all know everybody has had different  
12 site jurisdictions, different demographics, different  
13 support from your bosses, different size staffs. And so  
14 because this is a kind of a theme of our project.

15 Our guidebook has become what we call a  
16 recipe book. Let me share with you this is what I call  
17 my Betty Crocker Cookbook. And in our guidebook we  
18 actually do have practices that are the very basic,  
19 boiling an egg. And you know the hamburger version of  
20 recipe books. And in our guidebook we have some very

21 basic practices such as word of mouth, or putting up a  
22 poster at the polling place. And this is the diet

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1 cookbook it's an Oprah cookbook. This is an analogy  
2 for the smaller jurisdictions that needed a different  
3 kind of recipe because they are trying to stretch their  
4 calories further sort of speak. Then you have the  
5 connoisseurs cookbook. So there are pieces of the  
6 guidebook that are a little bit more for a jurisdiction  
7 that is really trying to be cutting edge and wants to  
8 do all sorts of fancy new things, new ways of  
9 recruiting, new ways of training, fancy power points.  
10 All of, you know, more hands on training. They have  
11 more money to pay for more in-depth training for some  
12 of their poll workers, some of their trouble shooters  
13 type of thing. And then we also have-- I have my  
14 little New York cookbook. This is to show that we were  
15 really ambitious in trying to get models from as many  
16 jurisdictions of different sizes and different  
17 resources as possible around the country. I promise you  
18 this is the end of my little cookbook schmeel.

19           So if you look at our table of contents you  
20 will see that we hope to have covered the whole realm  
21 of practices that are out there. We have called our  
22 book successful practices. We didn't say they were best

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1 practices and what we tried to do as we talked to  
2 practitioners across the country, as we were gathering  
3 their thoughts on their programs and their practices  
4 and their tools we asked them Okay that's great but is  
5 this sustainable? Is this something you can keep doing  
6 for years to come? Or is this a one time things where  
7 you had a bunch of money and you have a fabulous  
8 employee who can champion it? Is it measurable? Is it  
9 something you can say okay this actually did have an  
10 impact of getting better poll workers or having people  
11 retain the training pieces better. And we also asked  
12 them is it replicable ? Is it something that could only  
13 happen in your county? Or is it something that really  
14 can be shared with other counties, and they won't have  
15 to reinvent the wheel? Then what we did is when we  
16 found out, we got the responses, their nuance responses  
17 about their practices, and so in our book we also  
18 talk-- for each practice we have, we discuss the  
19 benefits of the practice, the pitfalls and challenges  
20 because we don't want other people to reinvent the  
21 wheel. Some tips for in making it happen in your  
22 jurisdiction. And we are also providing a methodology

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1 of whether it can work long term for you.

2           That's what the guidebook is. what the  
3 guidebook is not is it is not magic bullet. Obviously  
4 you're not going to read this guidebook and say: "okay,  
5 if I do all this good stuff I am going to have no  
6 problems getting fabulous poll workers. We are going to  
7 do the training and be brilliant on election day. what  
8 we hope is that you will pick and choose and really  
9 come out with some good stuff to chew on.

10           It is not a poll worker management program.  
11 we really had to step back from doing some of the  
12 management pieces because that's going to be in the EAC  
13 Management Guidelines for one thing. It wasn't part of  
14 our contract. Although we did cheat a little bit, we  
15 couldn't help ourselves we put in a chapter on Poll  
16 trouble shooters because although we are not  
17 technically poll workers we all know that they can be a  
18 fantastic saving grace on election day.

19           what we really hope is that this is not a  
20 static document. we are really hoping that all of you  
21 will think about ways that once this guidebook hits the  
22 streets, maybe at the end of this year, early next



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1 year, that it will be, you know, disseminated as much  
2 as possible. Think about maybe having it discussed at  
3 lunches and conferences, on IACREAT conferences. Think  
4 about maybe at your state associations summer meetings.  
5 We are hoping that some of our workers can be on a  
6 speaker circuit to get out there and introduce them to  
7 folks that can't come to meetings like this. And if you  
8 can think about that we would ask you to do that in  
9 your feedback form.

10           we also have not yet, if any of you got the  
11 electronic copy of this, we haven't yet put in some of  
12 the models we have gotten because people are still  
13 getting us electronic models. We really would like to  
14 have as many models as possible. So if you can send us  
15 things electronically we really appreciate it. We  
16 haven't it in the book yet because then it becomes  
17 difficult to share it. And it would have blown out your  
18 systems, you know, if we sent it to you that way. But  
19 we are looking for more models. And we are going to be  
20 testing-- I am going to wrap this up because Karen just  
21 stood up. That is my sign to wrap this up.

22           We are going to be testing this guidebook in

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1 three pilot jurisdictions this summer. We are going to  
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2 be going to be going to Hamilton County, Ohio, to Santa  
3 Fe New Mexico and to Milwaukee. Wisconsin. So we will  
4 be seeing if this guidebook really works. As as we go  
5 through changing or updating the guidebook to fit the  
6 realities of the jurisdictions that we are working with  
7 we definitely will be very happy to have more ideas  
8 more models from you all. So please look at that  
9 feedback form and provide us with, you know, some good  
10 stuff to put in here.

11 MS. HORN: I am Abergail Horn with the Center  
12 for Election Integrity from Cleveland State University.  
13 Thank you very much for having me today. It has been a  
14 real pleasure working with the EAC and an honor getting  
15 to speak to you all of you today.

16 I came to this not as a poll worker junkie or  
17 geek, I believe Jennifer said. But I have to admit that  
18 since working on this since October I guess I have to  
19 describe myself as a poll worker geek as well. But it  
20 is a proud term and we had a lot of fun with it.

21 Again, the Center for Election Integrity  
22 pulls expertise from the law school as well as the

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1 Urban Affairs College that has a focus on public  
2 administration so we really have a nice (inaudible)  
3 going. College students are in the learning mold. They

4 are tech savvy. They tend to be young and more  
5 energetic. They are generally physically fit and can  
6 set up heavy equipment, carry things around. They tend  
7 to have more flexible schedules and this is my  
8 favorite, but no proven over time, but this is a  
9 hypothesis that if you hook them now you have them for  
10 the future. Not necessarily as a poll worker. But if  
11 you get them engaged now in a real way within the  
12 democratic process , within the electoral process they  
13 will see the value of it and they will become  
14 physically engaged individuals throughout their  
15 lifetime. So that is part of it and that's why I became  
16 part of the program. But it is not a panacea, it is not  
17 a solution for every jurisdiction for the entire  
18 nations shortage of poll workers. There are a bunch of  
19 hurdles and I am going to go into them in more detail  
20 both legal hurdles as well as structural and  
21 circumstantial.

22           The three main ones are students are often

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1 not registered to vote in the same state or in the  
2 county or sometimes were necessary in the precinct  
3 where they are living and where the college is. And  
4 that can be a problem. They generally do not want to  
5 work, nor do they want to commit to work for more than  
6 one election. " I know what my schedule is this

7 semester and I am not signing up for anything that says  
8 I have to work more than this one". And indeed  
9 although they are flexible classes and assignments can  
10 get in the way and they can get in the way at the last  
11 minute about working on a full day schedule. That is  
12 why we put an emphasis in our guidebook in trying to  
13 get a University wide policy of excused absences for  
14 anyone who is going to be working as a poll worker. And  
15 that is something to work on as they get going.

16 Our project is set up in the same way that  
17 Jennifer's is in terms of having a project working  
18 group and having focus groups. We have a seven person  
19 team; three elections officials, three professors and  
20 indeed college students who are all providing us really  
21 wonderful feedback on the work as we move along.

22 We set out to collect what began from initial

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1 work to be best practices but we quickly included that  
2 to become effective strategies. We were really lucky.  
3 We had a wonderful pool of things to start looking at  
4 which was in 2004 the EAC provided grants to 15  
5 different colleges and non profits to run college poll  
6 worker programs. So we looked at those really  
7 carefully, talked to most of them and got a really good  
8 sense of what worked for them and what didn't. We went

9 on and looked at lots of different surveys and other  
10 materials. In fact Jennifer was a wonderful resource  
11 for us and fed us whenever she heard about college poll  
12 worker programs in different shapes and forms. And we  
13 have been following up in collecting lots of different  
14 examples. And please if you have any send them my way.  
15 My email will be at the end of this presentation. You  
16 may have it in your packet already, I'm not sure it  
17 already.

18                   But, surprisingly, there are very few  
19 structured programs. And a lot of people look to  
20 colleges and Universities in getting students to be  
21 poll workers but they don't have ongoing relationship  
22 with a particular college or university with a

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1 structured program in place. Not a lot of overtime  
2 programs. And that's what we really focused on in our  
3 guidebook which is to develop a long term relationship  
4 between the election jurisdiction and the college or  
5 university.

6                   we had four things for the focus groups and  
7 most of them we did. One with students who had worked  
8 as poll workers and one who did not. Overall their  
9 findings reiterated what we had already found through  
10 our research so that was great. We mainly talked to the  
11 students about incentives for being a poll worker and

12 hurdles. And we pulled that all together.

13           The next part of the project was pulling  
14 together the state statutes requirements. We looked at  
15 the statutory law in all 50 states territories etcetera  
16 related case law, anything pertaining to college poll  
17 workers popped us as well as where applicable in some  
18 states that we had to also look at the administrative  
19 code and the state constitution and of course at times  
20 they were in conflict with each other. But that is just  
21 to be expected.

22           we then really-- it took a long time to

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1 confirm all the data that we had. And send out to all  
2 of the states their particular information trying to  
3 get confirmation. We're just about there. And if you  
4 happen to notice any errors in there let us know. We  
5 are in an ongoing cleaning up process of the data.

6           And then there is always this issue of the  
7 fact that sometimes practice at the local level is not  
8 quite equal with what the policies say. And that is  
9 true in many, many cases. And sometimes, quite frankly,  
10 that is a good thing because the policies were pretty  
11 new and if practiced exactly as they are written often  
12 times it would be really hard to get college students  
13 to work. And I will go into those later.

14                   The state statues. We collected all the  
15 information and several more but I thought these were  
16 the more interesting ones so I stuck them up there.  
17 Each state, we have a three or four page information  
18 sheet and that all will be available on the EAC website  
19 when this project is all done. You can click on the  
20 page and see carious requirements for poll workers. We  
21 have synthesized that into a chart that is in our  
22 guidebook, and I believe you have a copy of the

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1 guidebook.

2                   This leads me to the actual guidebook which  
3 some of you may have. I have a few color versions with  
4 me so if you're really excited about college poll  
5 workers and want to see the color version let me know  
6 and I will give you one of those.

7                   One issue that we struggled with in writing  
8 is that we are writing for two different audiences. And  
9 i would love feedback from any of you on that in that  
10 we are writing for both elections officials who want to  
11 figure out to develop a program with college students.  
12 As well as for college and university representatives  
13 who want to get their students more integrated. So  
14 they are really two very different audiences. And at  
15 times that can be challenging.

16                   we have three different sort of call out  
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17 boxes that you will notice in the handbook. We suggest  
18 handing these out prior to election day. And to  
19 consider using the students they make really great  
20 temporary election workers as things get hectic.

21           A how to box for example we have one on how  
22 to develop a course reading, a big emphasis in the book

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1 is incorporating poll work into a class curriculum  
2 either has a service learning assignment or as extra  
3 credit. Or developing a whole course around the idea of  
4 citizenship. We have suggested reading that you might  
5 use to build a course around.

6           Ignore at your own risk for example one of  
7 the color boxes is designing equipment materials for  
8 college students be careful not to inadvertently insult  
9 your older veteran poll workers. You don't want to say  
10 we really need young smart people.

11           And there is a table of contents for the  
12 guidebook is a campus champion that is something we  
13 have put emphasis on. You really need to find somebody  
14 at the college or university who is going to be that  
15 champion a person who is really going to get out there  
16 put the word out and make it happen. At the same point  
17 you also need to have a strong liaison with the  
18 Election office.



19 Now I want to talk about retention and  
20 sustainability in college poll worker programs. We see  
21 that we are not able to retain these students. At most  
22 you're going to get a student for four years. And most

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1 likely you're not going to get the same student for  
2 their four years of college. But the emphasis is really  
3 on having sustainable programs. What you want to know  
4 is that you have this ongoing relationship that you  
5 work on and instruct with the local college or  
6 university. So that you can count on having 200  
7 students every year. They may be different faces and  
8 have to go through the training and so on. But you  
9 know that you have those bodies and that your partner  
10 at the college is going to come through for you. And  
11 indeed they are going to be quality poll workers.

12 There are examples of various programs that  
13 we talk about in the guidebook. They really come in  
14 different shapes and sizes Professor Ken built it into  
15 the curriculum as a service assignment. As I explained  
16 that is great. It might pull in 25 to 30 students in  
17 the class that way.

18 Campus wide recruiting campaign posts a lot  
19 of information. A lot of the EAC grantees followed  
20 this model they might have gotten 150 students by just  
21 getting the word out. Clinical science department

22 provides five extra credits. At large universities them

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1 have ten political science classes each one with 200  
2 students. It's a pool of 2000 potential students all  
3 offered five extra credit points. They bring in 250  
4 students easily to be poll workers. I just added this  
5 one the university sent out a mass email. That is not  
6 really a program that is an ongoing relationship but in  
7 fact it can work because in Cleveland in a recent  
8 primary I ended up contacting the President of  
9 Cleveland State and a community college and a four year  
10 college and they all sent out massive emails to their  
11 students. Faculty and staff saying they needed people  
12 who could come and work at the elections. And they got  
13 a huge turnout despite the fact it was the week of  
14 finals.

15           we are going to be running three pilot  
16 projects that are basically designed to field test our  
17 guide book. The criteria there is having strong  
18 interest from the election official and from the  
19 school. we are really excited in conducting this  
20 project.

21           Some major findings just a few of them. The  
22 emphasis in these programs is developing that

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1 relationship. we are talking about having sustainable  
2 program you want to have the time for relationships  
3 building. And on the colleges side if you want to  
4 incorporate it into curriculum and into classes you  
5 have to get your faculty at least a semester before.  
6 They are going to be tweaking their curriculum and they  
7 need that time ahead to make that a reality. It is  
8 really important to start early to get everyone on  
9 board because if you're going to have a university wide  
10 policy of excused absences on election days of poll  
11 workers you better get working nine or ten months ahead  
12 of time in order for it to go through the university  
13 system.

14           Let's see, Jennifer mentioned you don't want  
15 to see Uncle Sam needs you but with college students  
16 really stressing the important in your message that  
17 they play that this is not just some boring game but  
18 that in fact explaining the importance of poll workers  
19 which is in the democratic process students find  
20 interesting and indeed motivates them. That said skip  
21 down to my last point which are the two best incentives  
22 which by far blew out every other incentive you could

1 possibly think of.

2           First one is money and the second one is  
3 extra credit. So if you can work it through a college  
4 or university and professors to build it into their  
5 curriculum, fabulous. The students eat that up. And  
6 again students are cash starved.

7           Training on campus indeed should be very  
8 hands on, roll playing, lots of questions. In our focus  
9 groups students complained about not being-- feeling  
10 intimidated to ask questions. So lots of question and  
11 answers. And emphasis on the etiquette and  
12 intergenerational communication.

13           Again off year elections are not sexy, it's  
14 going to be easiest to get college students engaged for  
15 the Presidential elections. But that said, indeed there  
16 are many examples of students working primary. And  
17 other students working in between presidential  
18 elections. It is not impossible but you need to  
19 recognize that.

20           In getting students you will be surprised how  
21 often or an assignment will pop up just a week before  
22 when you thought you had everybody signed up and they

1 can't work on election days. So getting that commitment  
2 from the university or college is really important.

3           Quickly on the legal impediments. Indeed most  
4 states require poll workers to be registered voters of  
5 the state, usually of the county and in fact usually a  
6 resident of the precinct that they are going to be  
7 working in. Now again that policy practice issue comes  
8 into play there a lot. That can be a big problem for a  
9 poor college student. Sometimes they don't want to  
10 change their registration from their home town to where  
11 they are at college. And then on the flip side some  
12 states restrict college students from registering to  
13 vote in their college town. That can also be a big  
14 legal impediment.

15           Political affiliation: Only six states don't  
16 provide require some sort of political affiliation. Now  
17 at the county level they are not necessarily relying on  
18 political party lists to get their poll workers. And  
19 the time requirements as I mentioned students really  
20 don't want to commit to more than one election so if  
21 they are required to sign on the line to work for two  
22 straight years every election they are going to balk.

□

1           And please sent me your ides if you know of  
2 any projects out there I would love to hear about them.

3 And as you read through it any comments about format or  
4 language I would be more than happy to receive them  
5 any questions?

6 MR. BERNARD: Louie Bernard, Louisiana.

7 I wanted to ask Jennifer did you find  
8 somewhere that a split shift program that was really  
9 working. And B., was it the responsibility for the poll  
10 worker to find the partner or the election official?

11 MS. COLLINS-FOLEY: Interestingly enough we  
12 really tried to find a split shift program that really  
13 worked and we haven't found one. We found that most  
14 jurisdictions have tried it and given it up entirely. I  
15 talked to five different jurisdictions in Virginia last  
16 week. They said try this city or try Arlington I  
17 finally gave up. And then there are some that keep it  
18 just for the sake of showing that they are flexible.  
19 For example in Los Angeles County we found that poll  
20 workers don't want to do it. They don't want to find  
21 their own partner and they don't want to split the  
22 stipend. But we had to keep offering it just so we

□

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1 could say that we do. So we have a contract, you know  
2 and especially we found is that election officials are  
3 very reluctant to do this because you compromise the  
4 integrity of the process. What happens if the other

5 person doesn't show up? That is the key thing for  
6 elections officials is that integrity issue. And we  
7 found that even the jurisdictions that had tried it and  
8 given it up would never allow the lead poll worker to  
9 split a shift. That was one thing that was constant.  
10 So we had in our guidebook that was a big chapter and  
11 we moved it into a one pager. It is out there and  
12 people do it with limited success. We kept it in there  
13 and there is a whole big section of the pitfalls and  
14 challenges so that nobody had any doubt that it was not  
15 the most successful practice.

16 MS. MARKOWITZ: Deborah Markowitz, Vermont .

17 In Vermont we only use split shifts. The  
18 chief election official is there all day. And one of  
19 the things we recommend is that the people who count  
20 the votes, we hand count, except in eighty precincts  
21 and we recommend that the people who count are never  
22 the same people who sat there all day because it is

□

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1 hard to be precise at the end of the day. And we  
2 recommend for that late shift starting at three or four  
3 in the afternoon to school teachers. And that maybe  
4 useful for you for LA of some of these hard to places.  
5 Or they are people who work as bank tellers. They are  
6 very good at counting and are very precise. It is  
7 interesting although our chief election official in

8 every polling place stays the same because you need  
9 continuity. But that is the only person that we  
10 recommend be there all day.

11 MS. FOLEY: I will definitely look into that  
12 be cause we are about to do a case study on your  
13 program.

14 MS. MARKOWITZ: You should also look at the  
15 fact that our polls open up at five in the morning. So  
16 it is a long day.

17 MS. JOHNSON: Carol Johnson, New Hampshire.  
18 We also do split shifts in our community in  
19 Manchester. And we do it quite successfully as well. We  
20 also have an interesting problem with people showing up  
21 for training sessions. We do a two hour training  
22 session before every single election. We have had as

□

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1 many eight elections in an 18 month period. what we  
2 found was as an incentive showing up we changed the  
3 ordinance that provides payment. So if they show up at  
4 the training session they get more money than if they  
5 don't show up at the training.

6 MS. FOLEY: I definitely will come up there  
7 as well. One of the things that is going to be in our  
8 guidebook is a discussion of the money and how there is  
9 this trend for add on's people had their base



10 stipends . And then you can have all these little add  
11 on's seem to be a trend . And we are hoping this could  
12 be used by election officials in their budgeting  
13 process. They have to go to their bosses and say hey we  
14 are at the low end of the spectrum we need to give our  
15 poll workers a raise for picking up supplies extra.

16 MS. BOWERS: Marilyn Bowers, South Caroling.

17 we were almost successful this year in  
18 getting legislation past to allow registered voters  
19 within the state to expand to the use of college  
20 students but got it knocked down. We will try again.

21 I don't know if anyone has thought about  
22 doing online training for poll workers I got the idea

□

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1 because I had do a course because I was with the EAC  
2 during activation. And we did online training. We went  
3 through the training chapter by chapter, took the test  
4 and received notice that you were certified.

5 when I checked into some programs that were  
6 out there they are very expensive initial cost plus  
7 yearly cost and the logistics of training large numbers  
8 prior to every election which our law requires it takes  
9 a lot of classes to do all those elections. You could  
10 reach a larger number of people by certifying them  
11 through a computer course.

12 MS. FOLEY: In the guidebook we have a whole  
Page 174

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13 chapter on online training. And we are adding models of  
14 training that is bringing in a vendor. And also we are  
15 doing home grown versions. We are also doing-- in the  
16 jurisdictions that are doing their normal training  
17 classes and using the online training as a refresher.  
18 And we are also focusing on jurisdictions that are  
19 doing their entire training on line with some heavy  
20 emphasis on evaluating, whether this is effective or  
21 not. Are they getting their teenage sons go through and  
22 answer the questions. There is some good stuff in

□

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1 there. And again if anybody has models we are looking  
2 for them. But we have some good stuff already.

3 MS. KIFFMEYER: Mary Kiffmyer from Minnesota.

4 First of all I just wanted to mention that  
5 National Associations of Secretary's of State  
6 regularly send out surveys. Our national association  
7 can reach immediately into many states and within the  
8 states. This is something that may make it a little  
9 easier to find out where some of these things are. It  
10 could be a good resource for you. Only because even in  
11 Minnesota we have election training program and video  
12 brochures. I have not seen the references here but I  
13 just wanted to suggest that maybe before you add on's  
14 or something to use our national association. We could

15 be a resource to help you gather some information and  
16 data. Maybe make some of those contacts you will be  
17 hearing about.

18 MS. FOLEY: Thank you.

19 MS. BARTHOLOMEW: Tonni Bartholomew, State of  
20 Michigan.

21 we as well pay the part time workers. We  
22 choose to pay them a high rate. And we find that by

0

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1 doing that we can not only get housewives but we can  
2 get high school students. We use a lot of high school  
3 students that come in at 3 o'clock. We also do the add  
4 on pay for cell phone usage.

5 MS. LYNN-DYSON: One of the things I have not  
6 circled, Jennifer is you gave folks your contact  
7 information.

8 MS. FOLEY: One contact that you can use is I  
9 am at CollinsFoley@Yahoo.com but more importantly IFES  
10 has set up an email address that is: Guidebook-feedback  
11 @ IFES. Org .

12 And it is also on your feedback form at the  
13 table of contents that was a hand out.

14 MS. LYNN-DYSON: I think as the Election  
15 Assistance Commission moves forward through the summer  
16 on these pilot projects it will be-- and we actually  
17 get to the Fall get to the point with these manuals and

18 the college and the general poll worker manuals and  
19 also with our materials that you have heard about this  
20 afternoon with our ballot design and polling place  
21 signage it will be extremely helpful to our agency and  
22 to me to have feedback on marketing and distribution

□

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1 of these materials.

2           We are very proud of them. We are pleased  
3 that we have them. They also represent a good deal of  
4 investment on the part of our agency and your federal  
5 government. So these documents will do no one no good  
6 if they are just sitting on our website and we are not  
7 getting-- and people are not downloading them. Even in  
8 terms of actual production the old fashioned way and  
9 sitting on peoples book shelves collecting dust. So it  
10 would be very helpful to me to hear from you all about  
11 marketing and distribution of these products.

12           My email address is: Klynndyson@EAC.com so  
13 let me hear from you about our venues, setting, Mary  
14 mentioned mass. We certainly anticipate this summer  
15 through IACREAT and NASED and NEC meetings getting the  
16 word out. But I'd like to hear if you have any other  
17 ideas for us.

18           MR. MARTINEZ: Thank you very much for a very  
19 successful session. We are done for the afternoon. I

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20 am going to turn the mic over to MS. Nighswonger and  
21 let her any final remarks. Tomorrow we have a  
22 continental breakfast that starts at 8 a.m., I am told

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1 they should be set up at 7:35. We will start our first  
2 session promptly at 8:30. Tomorrow's topics are very  
3 important. We start with a presentation on management  
4 guidelines and we go throughout the morning until 4:30  
5 on important subjects that we are doing research on.  
6 And I can't think of any other announcements to end our  
7 day. Madam Chair?

8 MR. NIGHSWONGER: All right. I just want to  
9 thank all off the staff for their help, the  
10 interpreters we appreciate their long day. And also our  
11 court reporter. And I think if there are no objections  
12 we will adjourn for the evening.

13 (Thereupon, the above meeting was adjourned  
14 for the evening at approximately 5:35 o'clock,  
15 p.m.)

16 \* \* \* \* \*

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CERTIFICATE OF COURT REPORTER

I, Pauline Jansen, court reporter in and for the District of Columbia, before whom the foregoing meeting was taken, do hereby certify that the meeting was taken by me at the time and place mentioned in the caption hereof and thereafter transcribed by me; that said transcript is a true record of the meeting.

\_\_\_\_\_  
Pauline Jansen

□

**Briefing for  
U. S. Election Assistance Commission  
Standards Board**

**May 23 , 2006**



# Provisional Voting in Immigrants

029390





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**EAGLETON INSTITUTE OF POLITICS**

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Rutgers, The State University of New Jersey

**MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY**

029394

# Project Management Team

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Board of Governors Professor of Politics

Principal Investigator and Chair of the Project Management Team

**Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law**

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**Ingrid Reed. Director of the New Jersey Project**

The Eagleton Institute of Politics

**Daniel P. Tokaji, Assistant Professor of Law**

The Moritz College of Law

**John Weingart, Associate Director**

The Eagleton Institute of Politics

**Thomas M. O'Neill, Consultant**

The Eagleton Institute of Politics

Project Director

## **QUESTIONS RAISED BY THE EAC**

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

## TO ANSWER THOSE QUESTIONS

- Surveyed 400 local election officials
- Reviewed the EAC's Election Day Survey
- Analyzed states' experience with provisional voting:
  - use of statewide registration database
  - treatment of out-of-precinct ballots
  - use of different approaches to voter ID
  - consistency
  - time period allowed for ballot evaluation
- Collected provisional voting statutes and regulations
- Analyzed litigation

## Variation among the states

- In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million, or just over 63%, were counted.
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

## Some sources of variation among states

### Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

### Administrative Arrangements

#### Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

#### Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]

## Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied.

--The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

--Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers.

--Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

--Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

**1. How did states prepare for HAVA's provisional voting requirements?**

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**Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.**

**Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.**

- Only about 1 in 10 made available to poll workers a voter registration database.**

- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**



**2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

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**Local election officials in the “old” states felt more confident.**

**18 states were new to provisional voting; 25 others had experience.**

**“New” state officials felt:**

**-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.**

**-- More funding was needed to educate voters about their rights to cast a provisional ballot.**

**Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.**

**Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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#### **Pre-election litigation clarified voters' rights to:**

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

#### **4. How effective was provisional voting in enfranchising qualified voters?**

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**Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**There is room for improvement.**

**Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.**

**Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

---

**Little consistency existed among and within states.**

**The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.**

**Share of provisional ballots in the total vote was six times greater in experienced states than in new states.**

**More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.**

**"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**In-precinct versus out-of-precinct states had different outcomes.**

**States that allowed out-of-precinct ballots counted 56% of the provisional ballots.**

**States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.**

**In "old" states, this difference was greater.**

**52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.**

## Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

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14 states permitted less than 1 week :	35.4%
15 states permitted 1 – 2 weeks:	47.1%
14 states permitted more than 2 week:	60.8%.

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

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Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**Conclusions**

**States have latitude in how they meet HAVA requirements.**

**A considerable degree of variation among the states is to be expected.**

**If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for “new” states, consistency may increase more quickly.**

**Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

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**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities**

**Objectively, how well did the process appear to be managed?**

**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

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# **RECOMMENDATIONS TO THE EAC**

## **BEST PRACTICES**

## The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

## Lessons of litigation for achieving clarity

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.
  - Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

## EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- Specific reasons why provisional ballots were not counted
- Measures of variance among jurisdiction
- Time required to evaluate ballots by jurisdiction
- Provisional votes cast and counted by jurisdiction

## Assess each stage of the provisional voting process

### Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

### At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

### Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

# Assess each stage of the provisional voting process

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## Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

**Briefing for**  
**U. S. Election Assistance Commission**  
**Advisory and Standards Board**

**DISCUSSION AND QUESTIONS**

**May 2006**



Raymundo  
Martinez/EAC/GOV  
07/12/2005 05:24 PM

To Thomas R. Wilkey/EAC/GOV, Karen Lynn-Dyson/EAC/GOV  
cc  
bcc  
Subject Fw: Follow-up

Tom/Karen:

Here is an email from Dan Lowenstein (presenter in LaJolla and co-editor of Election Law Journal) who made some suggestions on names for the voter fraud work we are trying to do. Perhaps a call to Bruce Cain at Berkeley would be appropriate.

Karen, what do you think?

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
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— Forwarded by Raymundo Martinez/EAC/GOV on 07/12/2005 05:19 PM —



"Lowenstein, Daniel"  
<lowenstein@law.ucla.edu>  
06/21/2005 03:28 PM

To "Rick Hasen" <Rick.Hasen@lls.edu>, rmartinez@eac.gov  
cc "Lowenstein, Daniel" <lowenstein@law.ucla.edu>  
Subject RE: Follow-up

Ray,

Before I read Rick's message, Steve Ansolabehere was the first name that came to my mind. This assumes you are looking for part-time, not full-time consultants. I would categorize Steve as very moderate left. I am not certain he is Democrat but would be very surprised to learn he is not. But the main thing about him is that he calls things as he sees them. So if you found a Republican with the same characteristics, that would be ideal. Charles Bullock of the University of Georgia would be a possibility. (Actually, I'm not sure of his party either, but I think he may be a Republican.)

I would also suggest you talk to Bruce Cain in the Institute of Governmental Studies at Berkeley. He is very savvy and knows more political scientists than Rick and I do.

029417

Deliberative Process  
Privilege

When I have questions about the political science profession, he's usually the person I go to. His phone number is 510-642-1739. He is also going to be running a UC office in Washington, so he will be more or less living there for the indefinite future. He is someone you ought to get to know.

Best,

Daniel Lowenstein  
UCLA Law School  
405 Hilgard  
Los Angeles, California 90095-1476  
310-825-5148

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

**From:** Rick Hasen [mailto:Rick.Hasen@lls.edu]  
**Sent:** Tuesday, June 21, 2005 11:56 AM  
**To:** rmartinez@eac.gov  
**Cc:** Lowenstein, Daniel  
**Subject:** Re: Follow-up

We are now editing articles for our next issue, which is due out in October. We need to get everything to the printer for this issue in mid-July. So we'd need something from you by early July if it were to make it into that issue. Our deadlines after that are about three months later for each issue.

As far as researchers, I give my highest recommendation to Steve Ansolabehere of MIT, who has already done a bit of research on this issue. He is truly one of the top political scientists in the country working in this field, and he is careful and very fair (I don't know whether I'd count him as "left" or "right").

Dan may have other ideas.

Rick

rmartinez@eac.gov wrote:

Rick / Dan:

Thanks for the follow-up. As I mentioned to Dan in La Jolla, I do want to commit to doing a paper for ELJ. Aside from my own interest in election law and election administration, I think it is important for your readers to gain a better understanding of the role of the EAC and all that we are doing, particularly in the area of voting system standards and certification. Please tell me what the new deadline is and I will make sure to get you an outline of my intended submission, and of course, a timely draft for your consideration. Thanks again to both of you for the continued

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opportunity.

On a related note, in Section 241 of HAVA, Congress gives the EAC a laundry list of possible research topics related to improving the process of election administration. Among the suggested topics are the following:

- "(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office;
- (7) Identifying, deterring, and investigating methods of voter intimidation."

In order to get this research project started, the EAC would like to engage two research consultants who could bring some level of knowledge and expertise to the table and help the commissioners to come to an agreement on the framework and/or scope of such a research project. Rather than sending something out on the listserve, I thought I would directly solicit your opinions about any names in the academic field that you think we ought to consider. The reason we are looking to employ two consultants is because we would like to achieve a political balance -- one from the left, and one from the right, so to speak. Any thoughts you have on this would be greatly appreciated.

Regards,

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
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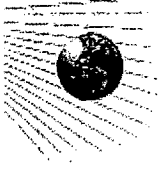
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029410



Paul DeGregorio /EAC/GOV  
08/19/2005 11:06 AM

To Gracia Hillman/EAC/GOV, Raymundo Martinez/EAC/GOV,  
ddavidson@eac.gov, twilkey@nycap.rr.com, Juliet E.  
Thompson/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol  
cc  
bcc  
Subject Eagleton

History:

This message has been forwarded.

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to be studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional

029420

staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

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Raymundo  
Martinez/EAC/GOV  
08/19/2005 02:37 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

bcc

Subject Eagleton

Paul:

I am directing this email only to the commissioners, because I don't think we should air our disagreements among staff until we have at least had a chance to discuss controversial issues with each other in person. It appears from Gracia's email that we will have a chance do so next week in Denver.

In the meantime, I feel compelled to respond to your email regarding Eagleton.

(1) As I stated last night in my email to Hans, we have an on-going responsibility to monitor the expenditure of all our federal funds, including to government contractors who are contractually obligated to deliver unbiased research. However, I will remind you that we did not contract with Eagleton merely to provide a compilation of state laws and procedures. Rather, we contracted with Eagleton (and indirectly with Moritz through Eagleton) to provide both research AND analysis of provisional voting and voter ID. Invariably, the analysis portion of their final product will be from a professional (and institutional) perspective, and will NOT represent any one researcher's personal point of view. If it does, then Eagleton and Moritz risk damaging their credibility not just with the EAC, but with other federal government agencies which undoubtedly contract with their respective institutions on other projects. I doubt seriously that either institution would risk such damage and allow one team member to inject bias into the work. Moreover, the peer review group that is (or has) been assembled by Eagleton is designed to cure any lingering concerns about potential institutional or personal bias...Eagleton has been responsive to your feedback on this issue, to the point where they have removed all perspective representatives of the advocacy community on the peer review group (because they felt they could not achieve political "balance" from the advocacy groups). If there is some person (or persons) which you would like to see Eagleton include in the review group, it is my understanding that such inclusion is but a mere phone call away.

(2) You will recall that at our meeting last week, I raised the exact same concern about the Eagleton progress report, and asked for clarification from staff regarding the details of this particular work (i.e., fraud) on the part of Eagleton. I expect staff (or us directly) to ask questions of Eagleton (as we would any contractor) and determine if their work in this area is within the scope of work (and contract) we all agreed to. If it isn't then we re-direct them, just as we have done, for example with Kim Brace and EDS.

(3) Finally, I must express my disappointment, Paul, regarding your comments on Professor Tokagi that you chose to include in your email. While I may disagree with Hans on his particular analysis of the perceived personal bias of this contract, at least his allegations regarding Professor Tokagi's potential bias are grounded in fact (and he recited them as such in his email). You, on the other hand, have chosen to accuse Professor Tokagi of manipulating the work on this project based on your "suspicion." With all due respect, that unfortunate accusation borders, in my view, on a breach of professional decorum and I cannot let it go without response.

We clearly have some political issues that are increasingly being injected into nearly every discussion at the EAC table. I have stated both to you and Gracia individually that I believe this trend in part represents a "maturation" of the EAC and I am not uncomfortable with it. However, if we are going to bring accusations of subjectivity and bias to the table, then I will expect that such a filter will be applied across the board to ALL projects undertaken by the EAC, and that such a filter will be based solidly on fact, and not on innuendo, personal hunches or suspicions.

029422

I send this email, as always, with the highest degree of respect and friendship toward you. And yet, my disappointment is evident in your comments regarding an esteemed and respected member of the legal academic community (and someone whom I regard as a personal friend.)

I look forward to our continued discussion on this matter. And as for the substance of Hans' concern regarding Moritz, I stand by my email which I sent to everyone last night.

Regards,

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
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029428

Raymundo  
Martinez/EAC/GOV  
08/30/2005 11:34 AM

To Gracia Hillman/EAC/GOV  
cc  
bcc  
Subject Consultants

Since we are about to hire Tova Wang (and two others) to be our consultants/researchers on the voter fraud study, I thought I would give you a heads-up about a well-written commentary that Tova just published. It is attached below. Paul's newfound political "fervor" still has me riled-up, needless to say. Hope your travels are going well.

## ID and Voting Rights

Laws requiring voters to present very specific forms of ID are becoming the voting rights barrier of the 21st Century.

**Tova Andrea Wang**

August 29 , 2005

Laws requiring all voters to present very specific forms of identification before exercising their right to vote are rapidly becoming the voting rights barrier of the 21st Century. Last Friday, the Department of Justice approved a new Georgia law requiring every voter to show a government-issued photo ID. The Department of Justice was required to review the measure and "preclear" it because that state is covered by Section 5 of the Voting Rights Act. Although many legal scholars and voting rights advocates had argued the Department should deny its implementation because it would lead to disenfranchisement of minority voters, the Department evidently did not agree. Indiana passed similar legislation this year, and several groups have sued the state on the grounds that it violates the Voting Rights Act.

Next up is Arizona. Last week, after months of resisting, the governor of Arizona signed off on a plan for implementing Proposition 200, which required identification from all voters. Arizona's new rule is that all voters must show government issued photo identification or a tribal identification to vote. Alternatively, the voter may present two current pieces of identification from a narrow list of potential documents that show the voter's name and current address, such as a utility and phone bills.

The most problematic provision is this: if the voter is not able to present a government issued photo ID or these two documents to the satisfaction of the poll worker, that voter is simply disenfranchised, asked to leave the polling place without casting a ballot. The voter may not even cast a provisional ballot. For example, if the voter brings a gas bill and a water bill, but the poll worker decides the water bill is not "dated within ninety days of the election," that person will be absolutely denied the right to vote. In addition to being a violation of the Help America Vote Act's mandate that any voter who shows up at the polls and believes he or she is registered and eligible to vote must be given a provisional ballot, this raises serious voting rights issues.



As a group of preeminent voting rights scholars have argued in Georgia, under Section 5 of the Voting Rights Act, a covered jurisdiction may not implement a change in its election laws or practices *unless the jurisdiction demonstrates* the change will be free of any racially discriminatory purpose or effect. The objective of Section 5 “has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”

As in Georgia, Arizona—especially given the possibility of a complete denial of the vote—has not met that burden of proof. It is up to the state to demonstrate that the ID requirement, which contemplates complete disenfranchisement of certain voters, will not have a discriminatory impact. So, for example, has the state examined whether most voters have or have easy access to the necessary documents? Have state officials investigated what groups are likely to lack the kinds of identification required? Since the law puts the burden on the state, the state must undertake these types of inquiries before it is permitted to go forward with this scheme—for there is a great deal of evidence indicating that it is indeed minorities who lack even one form let alone two forms of the types of identification contemplated.

The difficulty is that the poor and minorities are least likely to own motor vehicles and possess a driver’s license—the most commonly accepted form of identification. Indeed, in 1994, the U.S. Department of Justice found that African-Americans in Louisiana were 4 to 5 times less likely to have government-sanctioned photo ID than white residents. As a result, the Department denied pre-clearance for that state’s proposed photo ID requirement because it “would lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”

The evidence continues to mount. A June 2005 study by the University of Wisconsin found that less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults outside Milwaukee. One Arizona county reported in February that it was forced to reject nearly 75 percent of new voter registration forms for failure to provide adequate proof of citizenship.

Furthermore, for those who do not have the kinds of up-to-date non-photo ID necessary—and many minority and urban voters, for example those who live in multiple family dwellings simply will not—getting identification from the government will present costs and burdens for voters who simply want to exercise their constitutional right to vote. A certified copy of a birth certificate costs from \$10.00 to \$45.00, depending on the state; a passport costs \$85.00; and certified naturalization papers cost \$19.95. It may not be so very easy for people who work more than one job or have small children to take the time during business hours, drive to a Department of Drivers Services, and wait on line to get necessary identification. Indeed, most of the state’s offices are open 8:00 a.m. to 5:00 p.m. Monday through Friday. Has the state researched the potential disparate impacts on getting non-photo ID? If not, it has not met its burden under the Act.

There has been a great deal of controversial discussion over the Voting Rights Act recently because some sections—including Section 5—are due to expire. The Act was passed in order to eliminate procedures aimed at the disenfranchisement of particular groups. That it is still necessary is being demonstrated today in Arizona and Georgia

**Tova Andrea Wang is a senior program officer and Democracy Fellow at The Century Foundation, where this article first appeared.**

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Paul DeGregorio /EAC/GOV  
11/09/2005 11:28 AM

To Gracia Hillman/EAC/GOV, ddauidson@eac.gov, Raymundo  
Martinez/EAC/GOV, Juliet E. Thompson/EAC/GOV, Thomas  
R. Wilkey/EAC/GOV  
cc Karen Lynn-Dyson/EAC/GOV

bcc

Subject Call from Paul Vinovich

I took a telephone call this morning from Paul Vinovich. He had attempted to reach Gracia, but since she was not here, he asked Sheila if I was in the office so he spoke to me.

Paul was very upset with comments that Tova Wang had made at yesterday's AEI's meeting in which she basically indicated that voter fraud did not exist in the USA. He asked how a person who believes that voter fraud does not exist--or not seem at least willing to listen to both sides--can be hired by the EAC to do a study on voter fraud/voter intimidation. I explained to Paul (as I have now had to explain to many others) that Tova was "balanced" on the study with Job Severbrov. He did not know Job but was well-aware of Tova's positions and was concerned that her public comments indicate that she will not be fair in looking at this issue. I explained to Paul that we were monitoring the work of our consultants on this study and no report would be issued publicly without the support of at least three commissioners. I sent him some background information on Job. I think this study will need close monitoring.

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029427



Gracia Hillman/EAC/GOV

11/09/2005 12:40 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV, Raymundo Martinez/EAC/GOV, Juliet E. Thompson/EAC/GOV, Thomas R. Wilkey/EAC/GOV  
cc Karen Lynn-Dyson/EAC/GOV

bcc

Subject Re: Call from Paul Vinovich

What Paul V said is NOT at all an accurate statement of what Tova said. I was there. This is very disappointing to read. I may call Mr. V myself.

I watched and heard what was said and by whom. I will be glad to brief you tomorrow morning.

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio

**From:** Paul DeGregorio  
**Sent:** 11/09/2005 11:28 AM  
**To:** Gracia Hillman; Donetta Davidson; Raymundo Martinez; Juliet Thompson; Thomas Wilkey  
**Cc:** Karen Lynn-Dyson  
**Subject:** Call from Paul Vinovich

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029428



Gracia Hillman /EAC/GOV

11/21/2005 05:04 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
Ddavidson@eac.gov  
cc asherrill@eac.gov, aambrogi@eac.gov, Elieen L.  
Collver/EAC/GOV, sbanks@eac.gov  
bcc

Subject 9:30 Discussion on Tuesday

I am suggesting that we have our 9:30 discussion tomorrow to cover a couple of things:

1. The four of us need to spend some "quality" time together. Tomorrow will be a good time to pin down the earliest date when we will all be in DC and can devote a 1/2 day or so to discuss election of officers, etc. Perhaps on tomorrow we can develop an agenda for those discussions.
2. Defining balance for the make-up of the Working Group for our Voter Fraud/Intimidation project.

029429



Gracia Hillman/EAC/GOV

11/30/2005 04:17 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
Ddavidson@eac.gov

cc

bcc

Subject Thursday Comm Discussion

For our private time discussions, I propose that we add the composition of the Voter Fraud/Voter Intimidation Working Group to our list of topics to discuss.

As you will recall, we did not complete the discussion because Paul was not able to participate.

029430



Gracia Hillman /EAC/GOV

12/01/2005 12:47 PM

To Margaret Sims/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,  
rmartinez@eac.gov, Ddavidson@eac.gov,  
klynn-dyson@eac.gov

bcc

Subject Working Group for Voter Fraud/Intimidation Project

Peg:

Following is the guidance that the commissioners are providing with respect to the composition of the working group for the Voter Fraud/Voter Intimidation project and the selection process.

### 8 Member Working Group

Participants to be chosen by the two consultants in consultation with you. There are two slots that will require consensus. If consensus can't be reached, then you should make the decision. If there is real disagreement among the three of you, then the commissioners will make the selection.

The participation process prescribed below provides for political balance. As always, we ask that the group be diverse with respect to participation of men, women and minorities.

**4 people from the Academic , Legal and Advocacy sectors** - 2 to be chosen by Tova and 2 to be chosen by Job. We support your recommendation that there be at least one academic in the working group to help advise and comment on the construct of the database and you should provide that guidance to Tova and Job.

**2 State Level Election Officials** - 1 selected by Tova and 1 selected by Job

**1 Nonpartisan local election official** (selected by you or by consensus among the 3 of you)

**1 Representative from DOJ** - you had recommended a man who was retired from the Voting Section or perhaps someone else with similar credentials to be selected by you or by consensus among the three of you. We assume that Craig Dosantos (?sp) will participate in this project as an "advisor" and therefore would not take up a slot on the working group.

I will be on travel on Friday (tomorrow), however please feel free to call me on my cell should you have questions or need additional clarification.

Many thanks for your terrific work.

Gracia M. Hillman  
Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
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029431

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029432



Raymundo  
Martinez/EAC/GOV  
04/05/2006 04:12 PM

To Paul DeGregorio/EAC/GOV  
cc Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC  
bcc  
Subject Draft Agenda for Standards Board

Paul:

I've taken a shot at a draft agenda, but we have much work to do on this item. As you will see, my current vision, at least with regard to the Standards Board, is to have a series of presentations regarding all of our research projects, particularly those in which written draft reports will be ready for consideration, such as the provisional voting study and the voter ID study. However, there are too many research projects on the plate right now, and not enough time in a day and a half to be able to present all of them to both the Standards Board and BOA (not to mention "fatigue factor" if we overload these folks during this meeting). So, I've had to prioritize.

Anyway, attached is what I have come up with, and at the very bottom of the draft agenda, you will see the research projects that I left off the list. Next steps are for you to develop a similar draft agenda for the BOA, and I would suggest that you do something similar for the BOA, such that we will have concurrent session going on (Standards Board in one room, BOA in another)...for example, when the briefing for provisional voting is taking place for the SB members, you can be having a concurrent session for the BOA in another room on voter ID. Then we switch. (Same type of format for Day 2). This will allow us to have concurrent sessions going on simultaneously but we'll have to coordinate the schedule of these sessions. In the current draft agenda, I have the two boards coming together in the afternoon of the second day, but we may want them to start with a joint plenary session and end with a joint plenary session (though that is tough because they each have group-specific business to conduct when they first arrive -- at least the Standards Board does, such as adoption of permanent bylaws).

Anyway, this is still VERY MUCH a work in progress, so I welcome your feedback. Also, I think we need to get Tom and Karen involved in this discussion very soon, and then kick it over to the other commissioners for their input once you and I have agreement on a rough draft. After that, I will then want to send it to Peggy Nighswonger so that she can share it with the Executive Board to get their input before it goes final.

I'll wait to hear back from you.



DRAFT AGENDA (Standards Board) 2006.doc

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029434



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## MEMORANDUM

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**TO:** MEMBERS OF EAC STANDARDS BOARD  
**FROM:** PEGGY NIGHSWONGER, CHAIR, EXECUTIVE BOARD  
RAY MARTINEZ, EAC COMMISSIONER  
**DATE:** APRIL 10, 2006  
**SUBJECT:** UPCOMING MEETING OF STANDARDS BOARD, MAY 23-24, 2006

**The next meeting of the EAC Standards Board (to be held jointly with the EAC Board of Advisors) will be held in Washington, D.C. on Tuesday, May 23 and Wednesday, May 24, 2006 at the Hamilton Crown Plaza hotel.** We hope you will be able to attend this important meeting, which will focus on consideration and discussion of a number of ongoing election administration research projects currently underway by the EAC. Additionally, there will also be a discussion regarding recent work conducted by the National Institute of Standards and Technology (NIST) regarding voter verifiable audit trail. (Please see the draft agenda attached for additional information.)

As was the case with our previous meetings of the EAC Standards Board, the EAC will pay the cost of travel, hotel and a Federal per diem for any member of the Standards Board wishing to attend the May 2006 meeting. Upon receipt of this memorandum, please contact the EAC's travel agent, Adventure Travel, at (877) 472-6718 to make your travel arrangements. Additionally, if you have any questions or need assistance in making your travel plans, please call \_\_\_\_\_ (email address is \_\_\_\_\_).

Thank you in advance for your willingness to join us in Washington, D.C. We look forward to seeing you soon.

029435  
1

**U.S. ELECTION ASSISTANCE COMMISSION  
Standards Board Meeting Agenda  
Washington, D.C.  
May 23 – 24, 2006**

**Tuesday, May 23, 2006**

**1:00 – 2:30 a.m.**

**PLENARY SESSION**

Session Chaired by Peggy Nighswonger  
Chair, Executive Board

Appointment of Parliamentarian

Adoption of Agenda

Review of Meeting Book Materials

Presentation of Proposed Permanent Bylaws

Juliet Thompson, EAC General Counsel

Kevin Kennedy, Executive Director, State Elections Board,  
Wisconsin

Joanne Armbruster, Atlantic County Superintendent of  
Elections, New Jersey

William Campbell, City Clerk, City of Woburn, MA.

**2:30 – 2:45 a.m.**

**BREAK**

**2:45 – 4:00 p.m.**

**PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON PROVISIONAL VOTING**

Presentors:

Thomas O'Neil: Project Manager, EAC Provisional Voting

Ingrid Reed: Director, Eagleton Institute New Jersey Project

Dan Tokaji: Associate Director, Election Law@Moritz

Resource Person: Juliet Thompson, EAC General Counsel

**4:00 – 4:15 p.m.**

**BREAK**

**4:15 – 5:30 p.m.**

**PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON VOTER IDENTIFICATION**

029436

Presentors:  
Thomas O'Neil: Project Manager, EAC Provisional Voting  
Ingrid Reed: Director, Eagleton New Jersey Project  
Dan Tokaji: Associate Director, Election Law@Moritz  
Resource Person: Juliet Thompson, EAC General Counsel

**NOTE: Attendees on their own for dinner.**

**Wednesday, May 24, 2006**

**8:00 a.m. CONTINENTAL BREAKFAST**

**8:30 – 9:30 a.m. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON POLL WORKER RECRUITMENT, TRAINING  
AND RETENTION (INCLUDING COLLEGE POLL  
WORKERS)**

Presentors:  
Tracy Warren, Poll Worker Institute  
Jeannette Senecal, League of Women Voters  
Dora Rose, Center for Election Integrity, Cleveland State University  
Resource Person: Karen Lynn-Dyson, EAC Research Manager

**9:30 – 10:30 a.m. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON VOTE COUNT/RECOUNT**

Presentors:  
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah  
Dr. Michael Alvarez, Professor of Political Science, California Institute of  
Technology  
Resource Person: Juliet Thompson, EAC General Counsel

**10:30 – 10:45 a.m. BREAK**

**10:45 – 11:30 a.m. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON IMPROVING DATA COLLECTION**

Presentors:  
Karen Lynn-Dyson, Research Director, Election Assistance Commission  
Laiza Otero, Research Associate, Election Assistance Commission  
Resource Person: Brian Hancock, Research Associate

**11:30 – 12:15 p.m. PRESENTATION AND CONSIDERATION OF DRAFT  
REPORT ON VOTER FRAUD/VOTER INTIMIDATION**

Presentors:

029437

Job Serebrov, Associate, The Nixon Law Firm  
Tova Wang, Democracy Fellow, The Century Foundation  
Resource Person: Juliet Thompson, EAC General Counsel

**12: 15- 1:30 p.m. LUNCH**

**PRESENTATION REGARDING PROPOSED MODULE FOR VOTER  
VERIFIABLE PAPER AUDIT TRAIL (VVPAT) OF THE VOLUNTARY VOTING  
SYSTEM GUIDELINES (VVSG)**

Presentors:

Mark Skall, NIST

John Wack, NIST

**1:30 – 3:15 p.m. JOINT PLENARY SESSION**  
Session Jointly Chaired by Peggy Nighswonger, Chair, Executive  
Board and Beverly Kaufman, Chair, Board of Advisors

Discussion and deliberation.

**3:15– 3:30 p.m. BREAK**

**3:30 – 5:00 p.m. JOINT PLENARY SESSION (CONTINUED)**  
Session Jointly Chaired by Peggy Nighswonger, Chair, Executive  
Board and Beverly Kaufman, Chair, Board of Advisors

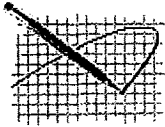
Discussion and deliberation.

**5:00 p.m. ADJOURN**

\* Not included in the current list of projects briefed:

- ◆ Design for Democracy updates and improvements to ballot design and polling-place signage.
- ◆ Public Access Portal research.
- ◆ Katrina Voting Assistance Relief research.
- ◆ Legal Online clearinghouse of election law materials.

029438



Gracia Hillman/EAC/GOV

09/17/2005 09:09 AM

To Carol A. Paquette/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo

bcc

Subject Plz Respond, Tally Vote Questions

I see only 2 consultants on the Tally Vote for the Voter Fraud/Voter Intimidation project. What happened to the third consultant?

Remind me how it is that EAC can sole source a contract to NASED? I don't have an objection; I am merely seeking information.

Thank you,

Gracia M. Hillman

Chair

U.S. Election Assistance Commission

1225 New York Avenue, NW, Suite 1100

Washington, DC 20005

Tel: 202-566-3100

Fax: 202-566-1392

[www.eac.gov](http://www.eac.gov)

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029430



"Tova Wang" <wang@tcf.org>

12/14/2005 11:16 AM

To DRomig@eac.gov

cc "Job Serebrov" <serebrov@sbcglobal.net>, psims@eac.gov

bcc

Subject checking in

Hi Devon,

I just wanted to check in and see how the nexis searching and sorting is going. Have you made any progress? Any questions come up? Let us know. Thanks.

Tova

**Tova Andrea Wang**  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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029440



Margaret Sims/EAC/GOV  
11/30/2005 11:00 AM

To Devon E. Romig/CONTRACTOR/EAC/GOV@EAC  
cc  
bcc  
Subject Nexis Search Terms

Devon:

In preparation for this afternoon's teleconference, you may want to review the attached list of Nexis search terms. If you have any questions, we can discuss them before the teleconference or, if I can't provide answers, we can ask our consultants who prepared the list. --- Peggy



nexis word search 1128.doc

• 029441

## Nexis Word Search Terms

November 28, 2005

The following are the terms that should be entered to search for news articles from 2000 to the present. The list assumes the intern has little experience with Nexis – there are ways to do the searches with far fewer terms than those below. We can train the intern if that is a better way to go.

Election and fraud  
Voter and fraud  
Vote and fraud  
Voter and challenge  
Vote and challenge  
Election and challenge  
Election and irregularity  
Election and irregularities  
Election and violation  
Election and stealing  
Ballot box and tampering  
Ballot box and theft  
Ballot box and stealing  
Election and officers  
Election and Sheriff  
Miscount and votes  
Election and crime  
Election and criminal  
Vote and crime  
Vote and criminal  
Double voting  
Multiple voting  
Dead and voting  
Election and counting and violation  
Election and counting and error  
Vote and counting and violation  
Vote and counting and error  
Voter and intimidation  
Voter and intimidating  
Vote and intimidation  
Denial and voter and registration  
Voter identification  
Vote and identification  
Voter and racial profiling  
Vote and racial profiling  
Voter and racial  
Vote and racial

029442

Voter and racial and challenge  
Vote and racial and challenge  
Voter and deny and racial  
Vote and deny and racial  
Voter and deny and challenge  
Vote and deny and challenge  
Voter and deny and black  
Vote and deny and black  
Voter and black and challenge  
Vote and black and challenge  
Voter and deny and African American  
Vote and deny and African American  
Voter and African American and challenge  
Vote and African American and challenge  
Election and black and challenge  
Election and African American and challenge  
Voter and deny and Hispanic  
Voter and deny and Latino  
Vote and deny and Hispanic  
Vote and deny and Latino  
Voter and Hispanic and challenge  
Voter and Latino and challenge  
Vote and Hispanic and challenge  
Vote and Latino and challenge  
Election and Hispanic and challenge  
Election and Latino and challenge  
Voter and deny and Native American  
Vote and deny and Native American  
Voter and Native American and challenge  
Vote and Native American and challenge  
Election and Native American and challenge  
Voter and deny and Asian American  
Vote and deny and Asian American  
Voter and Asian American and challenge  
Vote and Asian American and challenge  
Voter and Asian American and challenge  
Election and Asian American and challenge  
Voter and deny and Indian  
Vote and deny and Indian  
Voter and Indian and challenge  
Vote and Indian and challenge  
Election and Indian and challenge  
Poll tax  
Voting and test  
Absentee ballot and deny  
Absentee ballot and reject

029440

Absentee ballot and challenge  
Vote and challenge  
Voter and challenge  
Election and challenge  
Vote and police  
Voter and police  
Poll and police  
Vote and law enforcement  
Voter and law enforcement  
Poll and law enforcement  
Vote and deceptive practices  
Voter and deceptive practices  
Election and deceptive practices  
Voter and deceive  
Voter and false information  
Dirty tricks  
Vote and felon  
Vote and ex-felon  
Disenfranchisement  
Disenfranchise  
Law and election and manipulation  
Vote and purging  
Vote and purge  
Registration and removal  
Registration and purging  
Registration and purge  
Vote buying  
Vote and noncitizen  
Voter and noncitizen  
Vote and selective enforcement  
Identification and selective  
Election and misinformation  
Registration and restrictions  
Election and administrator and fraud  
Election and official and fraud  
Provisional ballot and deny  
Provisional ballot and denial  
Affidavit ballot and deny  
Affidavit ballot and denial  
Absentee ballot and coerce  
Absentee ballot and coercion  
Registration and destruction  
Voter and deter  
Vote and deterrence  
Voter and deterrence  
Ballot integrity

Ballot security  
Ballot security and minority  
Ballot security and black  
Ballot security and African American  
Ballot security and Latino  
Ballot security and Hispanic  
Ballot security and Native American  
Ballot security and Indian  
Vote and suppression  
Minority and vote and suppression  
Black and vote and suppression  
African American and vote and suppression  
Latino and vote and suppression  
Hispanic and vote and suppression  
Native American and vote and suppression  
Vote and suppress  
Minority and vote and suppress  
African American and vote and suppress  
Latino and vote and suppress  
Native American and vote and suppress  
Vote and depress  
Jim Crow  
Literacy test  
Voter and harass  
Voter and harassment  
Vote and mail and fraud  
Poll and guards  
Election and consent decree  
Vote and barrier  
Voting and barrier  
Voter and barrier  
Election and long line  
Voter and long line

Poll worker and challenge  
Poll worker and intimidate  
Poll worker and intimidation  
Poll worker and intimidating  
Poll worker and threatening  
Poll worker and abusive  
Election official and challenge  
Election official and intimidate  
Election official and intimidation  
Election official and intimidating  
Election official and threatening  
Election official and abusive

Poll watcher and challenge  
Poll watcher and intimidate  
Poll watcher and intimidating  
Poll watcher and intimidation  
Poll watcher and abusive  
Poll watcher and threatening  
Poll inspector and challenge  
Poll inspector and intimidate  
Poll inspector and intimidating  
Poll inspector and intimidation  
Poll inspector and abusive  
Poll inspector and threatening  
Poll judge and challenge  
Poll judge and intimidate  
Poll judge and intimidating  
Poll judge and intimidation  
Poll judge and abusive  
Poll judge and threatening  
Poll monitor and challenge  
Poll monitor and intimidate  
Poll monitor and intimidating  
Poll monitor and intimidation  
Poll monitor and abusive  
Poll monitor and threatening  
Election judge and challenge  
Election judge and intimidate  
Election judge and intimidating  
Election judge and intimidation  
Election judge and abusive  
Election judge and threatening  
Election monitor and challenge  
Election monitor and intimidate  
Election monitor and intimidating  
Election monitor and intimidation  
Election monitor and abusive  
Election monitor and threatening  
Election observer and challenge  
Election observer and intimidate  
Election observer and intimidating  
Election observer and intimidation  
Election observer and abusive  
Election observer and threatening

Margaret Sims /EAC/GOV

11/30/2005 10:58 AM

To: Tamar Nedzar/EAC/GOV@EAC

cc: Devon E. Romig/CONTRACTOR/EAC/GOV@EAC

bcc:

Subject: Re: Fw: Updated Word Search List 

Tamar:

**Don't worry about responding to this email , as I know you have to pay attention in class .**

I questioned the length of the search term list and also thought that there would be ways to combine some of the search terms. It has been awhile since I have done a Westlaw search, however, which is why I need your input during the teleconference. Yes, I recognize that going through the list of search terms and printing off or saving the resulting references will take time. I'll need you to provide that feedback to our consultants so that we all are on the same page.

Devon has not done a Nexis search before; but, if EAC has access to that database, she is willing to conduct that search. The work would go along with other help she is providing. She will be sorting through my huge files of press clippings on voting fraud, will PDF the sorted clippings, and drop the PDF files onto CDs for our consultants' review.

Peggy Sims  
Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov

029447

Margaret Sims /EAC/GOV  
11/30/2005 04:41 PM

To Tamar Nedzar/EAC/GOV@EAC, Devon E.  
Romig/CONTRACTOR/EAC/GOV@EAC  
cc  
bcc  
Subject Tova and Job Contact Information

Tamar and Devon:

The phone numbers and email addresses for Tova and Job follow. I would appreciate it if you would cc: me on any emails you send to them and summarize any phone calls with them. That way, I can be kept in the loop without serving as a roadblock or go-between. Thanks! --- Peggy

Tova Wang (New York)  
Phone: 212-452-7704  
Email: wang@tcf.org

Job Serebrov (Arkansas - one hour earlier time zone)  
Phone: 501-374-2176  
Email: serebrov@sbcglobal.net

029448

**Contains Privacy Act  
Protected Information**





"Tova Wang" <wang@tcf.org>

12/14/2005 11:16 AM

To DRomig@eac.gov

cc "Job Serebrov" <serebrov@sbcglobal.net>, psims@eac.gov

bcc

Subject checking in

Hi Devon,

I just wanted to check in and see how the nexis searching and sorting is going. Have you made any progress? Any questions come up? Let us know. Thanks.

Tova

**Tova Andrea Wang**  
Senior Program Officer and Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
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029440



"Tova Wang"  
<wang@tcf.org>  
05/10/2006 11:45 AM

To psims@eac.gov  
cc serebrov@sbcglobal.net, dromig@eac.gov  
bcc

Subject Material I may not have included

Peg,

Correct me if I'm wrong, but I think I omitted sending you these specific summaries that are based on complex cases that could not be adequately described within the confines of the nexis article excel spreadsheets. If we can, these should be included, probably on the disc. Sorry.

**Tova Andrea Wang**  
Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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Wisconsin FINAL.doc South Dakota FINAL.doc Washington FINAL.doc

029450

## Summary of Wisconsin Voting Irregularities November 2004

### *Instances of Illegal Voting, Milwaukee:*

A probe led by U.S. Attorney Steve Biskupic and Milwaukee County District Attorney Michael McCann found about 200 cases of illegal felon voting and at least 100 cases of other forms of illegal voting in the city of Milwaukee. Of these, 14 were prosecuted:

10 were instances of felons voting while on probation or parole:

5 are awaiting trial. (one of them is DeShawn Brooks)<sup>1</sup>

1 has been acquitted<sup>2</sup>

1 has been found guilty in trial (Kimberly Prude)<sup>2</sup>

3 have reached plea agreements (Milo Ocasio<sup>3</sup>)

[names: Ethel M. Anderson, Correan F. Edwards, Jiyto L. Cox, Joseph J. Gooden<sup>4</sup>]

4 were instances of double voting:

1 produced a hung jury (Enrique Sanders)<sup>2</sup>

1 was found incompetent to stand trial and his case was dismissed

1 initially pleaded guilty but now wants a trial.<sup>5</sup>

1 is awaiting trial.

Two of those accused of double voting were driven to multiple polling places in a van, but the identity of the driver of the vehicle is not known, and the DA does not suspect conspiracy.<sup>6</sup>

In addition to these, four people were charged with felonies in the Milwaukee County Circuit Court; two cases were filed against people accused of sending in false registration cards under the auspices of the Association of Community Organizations for Reform Now; the other two were felons who voted illegally.<sup>7</sup>

### *Instances of Illegal Voting, Statewide:*

The Legislative Audit Bureau, a nonpartisan research agency, released its analysis of state-wide 2004 election results in September 2005. The agency reviewed the names, addresses, and birthdates of over 348,000 individuals credited with having voted in November 2004, from the electronic voter registration records of 6 cooperating municipalities, and compared them to lists from the Department of Corrections of felons serving sentences on election day, and to lists from the municipalities (to check up on

---

<sup>1</sup> Barton, Gina. "Man acquitted in voter fraud trial; Felon had been under supervision at time." *Milwaukee Journal-Sentinel*. October 6, 2005.

<sup>2</sup> Schultze, Steve. "No vote fraud plot found. Inquiry leads to isolated cases, Biskupic says." *Milwaukee Journal-Sentinel*. December 5, 2005.

<sup>3</sup> "Felon says he voted illegally." *Milwaukee Journal-Sentinel*. September 17, 2005.

<sup>4</sup> Barton, Gina. "4 charged with voting illegally in November." *Milwaukee Journal-Sentinel*. August 17, 2005.

<sup>5</sup> Milwaukee J-S. December 5, 2005.

<sup>6</sup> Milwaukee J-S. December 5, 2005.

<sup>7</sup> Milwaukee J-S. December 5, 2005.

029451

**Deliberative Process  
Privilege**

double-voting) and to lists from the US Social Security Administration. LAB's search revealed 105 "questionable" votes:

- 98 ballots cast by ineligible felons, 57 of which were in Madison, 2 in Waukesha, 15 in Eau Claire, 16 in Appleton, 1 in the Village of Ashwaubenon
- 2 instances of double-voting (one in Madison, one in Waukesha).
- 4 votes counted despite the voter's having died two weeks or less before the election.
- 1 case in which a 17-year-old voted in Madison.<sup>8</sup>

The LAB referred the names of these people to the appropriate District Attorney for prosecution, and several cases are awaiting trial.

It should be noted that this study is not a complete survey of election returns state-wide in Wisconsin; the LAB's analysis is based on the voting records of the six municipalities that provided the LAB with sufficient information to conduct this study.

It should also be noted that the LAB discovered significant error in the data provided them by these municipalities, including:

- 91 records in which the individual's birthdate was incorrectly recorded as later than November 2, 1986
- 97 cases in which a person was mistakenly recorded as having voted twice
- More than 15,000 records were missing birthdates, making it more difficult to determine voter eligibility by comparing these records to lists of felons and deceased persons.<sup>9</sup>

### *General Findings*

Both reports (the Legislative Audit Bureau's and the report of the Joint Task Force on Election Reform convened in Milwaukee) that did in-depth studies of the Wisconsin election returns in 2004 found that there was no evidence of systematic, wide-spread fraud.<sup>10</sup> As the above statistics indicate, there are very few cases in which an individual intentionally voted illegally, and the majority of the discovered instances of fraudulent voting involved felons who were unaware that they were committing a crime. Certainly the number of fraudulent votes, intentional and unintentional, is dwarfed by the amount of administrative error – and the amount of potential there was for fraud.

### *Registration Irregularities*

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<sup>8</sup> Borowski, Greg J. "State audit digs up wider vote problems; Thousands of voters on rolls more than once." *Milwaukee Journal-Sentinel*. September 17, 2005

<sup>9</sup> "An Evaluation: Voter Registration." *Legislative Audit Bureau*. Madison, Wisconsin. September 2005. Pg. 50-52.

<sup>10</sup> Brinkman, Phil. "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes." *Wisconsin State Journal*. May 11, 2005.

Duplicate Registrations: In the data from the six participating municipalities, LAB found 3116 records for individuals who appear to be registered more than once in the same municipality (0.9% of the records they reviewed). These duplications were primarily the result of name changes, in which the registrar neglected to remove the old name from the registration list, previous addresses that were not deleted, and misspellings and other typographical errors.

Deceased Voters: the LAB study found 783 persons who were deceased, but whose records had not been eliminated from the registration lists. Most of the municipalities participating in the survey rely on obituaries and notifications from family members to purge their voter registration lists of deceased voters.

Felons: Comparing a list of felons from the Department of Corrections to their voter registration data lists, LAB found 453 felons who were registered to vote. This is largely because, although municipal clerks are informed of federal felony convictions, they have no way of obtaining records on state felony convictions.<sup>11</sup>

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<sup>11</sup> Legislative Audit Bureau Report: pg 43-47.

## Summary of South Dakota Election Irregularities in 2002 and 2004

### **2002**

In fall 2002, one of South Dakota's Senators, Democrat Tim Johnson, was up for re-election, and was engaged in a very close race with his Republican challenger, John Thune. Both parties were engaged in a massive voter registration effort, and registered over 24,000 new voters in the five months between the June primary and the November election, increasing the number of registered voters in the state from around 452,000 to 476,000.<sup>1</sup>

A month before the election, several counties reported irregularities in some of the voter registration documents they'd received. In response to these reports, South Dakota Attorney General, Mark Barnett, with the state US Attorney and the FBI, launched an investigation.<sup>2</sup> Because of the importance of the race in determining the partisan balance of power in the Senate, the voter registration discrepancies got a good deal of national press, including a number of editorials accusing American Indians of stuffing ballot boxes.<sup>3</sup> The following allegations were also picked up by out-of-state newssources, including Fox News and the Wall Street Journal:

- Supporters of Thune, who lost the election by 524 votes, collected 47 affidavits from poll watchers claiming voting irregularities.
- Allegations were made that three individuals were offered money by Johnson supporters to vote.

Barnett, who was alerted to the affidavits when he read an early media report that referred to them, stated that these allegations were either false or didn't warrant concern. "Most of the stuff that's in those other 47 affidavits are the kind of problems that we see in every election. People parking too close to the polling place with a sign in their window, people shooting their mouths off at the polling place. The kind of things that local election officials generally do a pretty good job of policing."<sup>4</sup> The allegations of voter bribery were false.

Though most of the allegations of fraud that were filed turned out to be false, Attorney General Barnett's investigation did uncover two cases of voter registration fraud:

- The most high-profile case was that of Becky Red Earth-Villeda. Ms. Red Earth-Villeda was hired by the state Democratic party to register voters on the American Indian reservations. She was charged with 19 counts of forgery. No fraudulent voting was associated with Ms. Red Earth-Villeda, nor was there any evidence

---

<sup>1</sup> Kafka, Joe. "More people registered to vote." *Associated Press State and Local Wire*. October 29, 2002.

<sup>2</sup> Kafka, Joe. "Voter registration fraud being investigated." *Associated Press State and Local Wire*. October 11, 2002.

<sup>3</sup> "Barnett: No evidence that fraud affected vote." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. November 21, 2002.

<sup>4</sup> Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

that fraudulent voting occurred in the state.<sup>5</sup> All charges were dropped in January 2004, when, in court, it was determined by the state handwriting specialist that Ms. Red Earth-Villeda had not forged the signatures.<sup>6</sup>

- Lyle Nichols. Mr. Nichols was arrested for submitting five forged voter registration cards to his county office. He was working for an organization called the Native American Voter Registration Project, and was paid \$3 for each registration. The five charges were dropped after Mr. Nichols pleaded guilty to possession of a forgery, and was sentenced with 54 days in jail, which is how much time he'd already spent there because of the charges.<sup>7</sup>

## 2004

In October 2004, just before the general election, eight people working for a campus GOP Get-out-the-Vote organization resigned their positions after they were accused of submitting absentee ballot requests that had not been notarized properly. Because many of these ballot requests had already been processed and the ballots themselves had been cast, county auditors decided not to pursue the issue.<sup>8</sup>

Besides this incident, there were no reports of voter registration or voting irregularities in the run-up to the November 2004 election, as there were in 2002.<sup>9</sup> However, as with the primary and special elections in June 2004, there were complaints about voter intimidation from American Indians attempting to vote, as well as difficulties with the adoption of the state's new photo identification regulations (after the 2002 election, the state legislature passed more stringent requirements about the kind of identification voters would need to provide at the polls.)

### Incidents:

**Voter Intimidation:** The Four Directions Committee, an organization dedicated to helping American Indians register to vote and get to the polls, got a temporary restraining order on several Republican supporters who, they alleged, had been setting up video equipment outside of polling places on American Indian reservations and following around American Indians who voted early and recording their license plates.<sup>10</sup>

**Vote Buying:** A Republican election monitor from Virginia, Paul Brenner, claimed that Senator Tom Daschle's campaign was paying people to vote. Local county auditors

---

<sup>5</sup> Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

<sup>6</sup> Walker, Carson. "Charges dropped against woman accused of voter fraud." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. January 28, 2004.

<sup>7</sup> "Rapid City man arrested for voter fraud." *Associated Press State and Local Wire*. Rapid City, South Dakota. October 18, 2002.

<sup>8</sup> Melmer, David. "Voting problems resurface in South Dakota." *Indian Country Today*. October 27, 2004.

<sup>9</sup> Melmer, David. "Election Day goes smoothly on Pine Ridge, S.D., reservation." *Indian Country Today*. November 10, 2004.

<sup>10</sup> Walker, Carson. "Observer alleges vote buying; worker says he never went to Pine Ridge." *Associated Press State and Local Wire*. October 31, 2004.

believe Brenner started the rumor himself. As there was no evidence for either side, the claims were not taken seriously.<sup>11</sup>

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<sup>11</sup> Walker, Carson. "Some problems and oddities reported on Election Day." *Associated Press State and Local Wire*. November 2, 2004.



## Summary of Election Irregularities in Washington State 2004

The 2004 Washington state gubernatorial election was decided by one of the narrowest margins in American electoral history; 261 votes – less than a millionth of the 2.8 million votes cast statewide - separated the leading candidate, Republican Dino Rossi, from his competitor, Democrat Christine Gregoire. The state law-mandated recount that followed brought the margin down to 42 votes, and the subsequent hand recount ordered by the state Democratic Party gave Gregoire the lead, with 129 more votes than Rossi.

The race was so close that the parties decided to go to court to dispute the tally – the Republicans wanted the election results set aside and to have a revote; the Democrats sought a court-legitimated win. Each side set out into the field to find a way to swing the election in their favor. The trial and accompanying investigation, which lasted through the spring of 2005, revealed a litany of problems with the state's election system:

- The process by which absentee ballots are matched to the voters who requested them led to discrepancies between the number of absentee ballots received and the number of votes counted.<sup>1</sup>
- After the final certification of the election results, King County discovered 96 uncounted absentee ballots, Pierce county found 64, and Spokane County found eight; all had been misplaced following the election, but there was no mechanism for reconciling the number of absentee ballots received with the number counted.<sup>2</sup>
- Hundreds of felons who were ineligible to vote were able to cast ballots because they were not aware that they needed to apply to have their voting rights reinstated.<sup>3</sup>
- The system for verifying the eligibility of voters who had cast provisional ballots was found to be questionable.<sup>4</sup>
- Due to poll worker error, about 100 provisional ballots were improperly cast, and a hundred more were counted, though they were not verified as having been cast by eligible voters.<sup>5</sup>

The trial also revealed that most of these problems were the result of understaffing and human error.<sup>6</sup> In total, 1,678 ballots were proven to have been cast illegally, but none of these votes was subtracted from the candidates' totals because no evidence was produced in court as to how each individual voted.<sup>7</sup> Further, despite the scrutiny that the election

---

<sup>1</sup> Ervin, Keith. "County elections official demoted; 2004 balloting fallout – Chief predicts 'series of changes'." *The Seattle Times*. June 15, 2005. See also Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

<sup>2</sup> Ervin, Keith. "Voters irked by uncounted ballots." *The Seattle Times*. June 17, 2005.

<sup>3</sup> Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

<sup>4</sup> Roberts, Gregory. "GOP contrasts elections offices; Chelan County's work better than King's, judge in gubernatorial case told." *The Seattle Post-Intelligencer*. May 25, 2005.

<sup>5</sup> Ervin, Keith. "Prosecutors to challenge 110 voters; They are said to be felons – 2 counties discover uncounted ballots." *The Seattle Times*. April 29, 2005.

<sup>6</sup> Ervin, Keith. "King County ballot numbers don't add up; 4000 discrepancies – Review of records finds flaws at each stage of the election; voting, processing, counting." *The Seattle Times*. May 25, 2005.

<sup>7</sup> *Borders v. King County*. Court's Oral Decision. 6. June. 2005.

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returns revealed, and the extensive discussion of voter fraud throughout the investigation, just eight cases of voter fraud were discovered:

- 4 people were accused of casting absentee ballots for their deceased spouses.<sup>8</sup>
- A mother and daughter were charged with the absentee ballot of the mother's husband who had died earlier in the year
- 1 man cast the ballot of the deceased prior resident of his home.
- A homeless resident of Seattle cast two ballots, one in the name of Dustin Ocoilain.<sup>9</sup>

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<sup>8</sup> Johnson, Gene. "Two plead guilty to voting twice in 2004 general election." *Associated Press*. June 2, 2005.

<sup>9</sup> Ervin, Keith. "6 accused of casting multiple votes; King County voters face criminal charges - Jail time, fines possible." *Seattle Times*. June 22, 2005.

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## Major Vote Buying Cases Summary

Between 2001 and 2006, allegations and convictions for vote buying and conspiracies to buy votes were concentrated in three states: Illinois, West Virginia and Kentucky.

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In East St. Louis, Illinois, nine individuals, including a former city council member and the head of the local Democratic Party, Charles Powell, Jr., were convicted or pled guilty to vote buying and conspiracy to commit election fraud during the 2004 general election. The government's conspiracy case was almost entirely based on taped conversations in which the defendants discussed buying votes for \$5 and whether this would be adequate. Federal prosecutors alleged that the vote buying was financed with \$79,000 transferred from the County Democratic Party shortly before the election, although county officials have not been charged. Four defendants were convicted of purchasing or offering to purchase at least one vote directly, while Democratic Party chairman was only convicted of conspiracy.<sup>1</sup> Earlier, three precinct officials and one precinct worker pled guilty to buying votes for \$5 or \$10 in that same election.<sup>2</sup>

Eastern Kentucky has witnessed a series of vote buying cases over the last several years. The most recent revolved around Ross Harris, a Pike County political fundraiser and coal executive, and his associate Loren Glenn Turner. Harris and Turner were convicted in September 2004 of vote buying, mail fraud, and several other counts.<sup>3</sup> Prosecutors alleged Harris and Turner conspired to buy votes and provided the necessary funds in an unsuccessful 2002 bid for Pike County district judge by former State Senator Doug Hays. Harris supplied nearly \$40,000, Turner laundered the money through straw contributors, and the cash was then disbursed in the form of \$50 checks ostensibly for 'vote hauling', the legal practice of paying campaign workers to get voters to the polls which is notorious as a cover for buying votes.<sup>4</sup> Harris attempted to influence the race on behalf of Hays in order to get revenge on Hays' opponent for a personal matter.<sup>5</sup>

A grand jury initially indicted 10 individuals in connection with the Harris and Turner case, including Hays and his wife, and six campaign workers. Of the remaining defendants, only one, Tom Varney, also a witness in the Hays case, pled guilty. The others were either acquitted of vote buying charges or had vote buying charges dropped.<sup>6</sup> Prosecutors have announced that their investigation continues into others tied to Harris and may produce further indictments.

The Harris case follows a series of trials related to the 1998 Knott County Democratic primary. Between 2003 and 2004, 10 individuals were indicted on vote buying charges, including a winning candidate in those primaries, Knott County judge-executive Donnie Newsome, who was reelected in 2002. In 2004 Newsome and a supporter were sent to jail and fined. Five other

<sup>1</sup> "Five convicted in federal vote-fraud trial" Associated Press, June 30, 2005; "Powell gets 21 months" Belleville News-Democrat, March 1, 2006.

<sup>2</sup> "Four Plead Guilty To Vote-Buying Cash Was Allegedly Supplied By St. Clair Democratic Machine" Belleville News-Democrat, March 23, 2005.

<sup>3</sup> "2 found guilty in pike county vote-fraud case; Two-year sentences possible," Lexington Herald Leader, September 17, 2004.

<sup>4</sup> "Jury weighing vote-fraud case," Lexington Herald Leader, September 16, 2004.

<sup>5</sup> "Pike Election Trial Goes To Jury" Lexington Herald Leader, January 1, 2006.

<sup>6</sup> "Former state senator acquitted of vote buying," Lexington Herald Leader, November 2, 2004.

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defendants pled guilty to vote buying charges, and three were acquitted. The primary means of vote buying entailed purchasing absentee votes from elderly, infirm, illiterate or poor voters, usually for between \$50 and \$100. This resulted in an abnormally high number of absentee ballots in the primary.<sup>7</sup> Indictments relating to that same 1998 primary were also brought in 1999, when 6 individuals were indicted for buying the votes of students at a small local college. Five of those indicted were convicted or pled guilty.<sup>8</sup>

Absentee vote buying was also an issue in 2002, when federal prosecutors opened an investigation in Kentucky's Clay County after an abnormal number of absentee ballots were filed in the primary and the sheriff halted absentee voting twice over concerns.<sup>9</sup> Officials received hundreds of complaints of vote-buying during the 2002 primary, and state investigators performed follow up investigations in a number of counties, including Knott, Bell, Floyd, Pike, and Maginoff.<sup>10</sup> No indictments have been produced so far.

So far, relatively few incidents of vote-buying have been substantially identified or investigated in the 2004 election. Two instances of vote buying in local 2004 elections have been brought before a grand jury. In one, a Casey County man was indicted for purchasing votes in a local school board race with cash and whiskey.<sup>11</sup> In the second, the grand jury chose not to indict an individual accused of offering to purchase a teenager's vote on a local proposal with beer.<sup>12</sup>

An extensive vote buying conspiracy has also been uncovered in southern **West Virginia**. The federal probe, which handed down its first indictment in 2003, has yielded more than a dozen guilty pleas to charges of vote buying and conspiracy in elections since the late 1980s. As this area is almost exclusively dominated by the Democratic Party, vote-buying occurred largely during primary contests.

The first phase of the probe focused on Logan County residents, where vote buying charges were brought in relation to elections in 1996, 2000, 2002 and 2004. In an extraordinary tactic, the FBI planted the former mayor of Logan City, Tom Esposito, as a candidate in a state legislative race. Esposito's cooperation led to guilty pleas from the Logan County Clerk, who pled guilty to selling his vote to Esposito in 1996,<sup>13</sup> and another man who took money from Esposito for the purpose of vote buying in 2004.<sup>14</sup>

Guilty pleas were also obtained in connection with former county sheriff Johnny Mendez, who pled guilty to buying votes in two primary elections in order to elect candidates including

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<sup>7</sup> "Knott County, KY., Judge Executive sentenced on vote-buying conspiracy charges," Department of Justice, March 16, 2004.

<sup>8</sup> "6 men accused of vote fraud in '98 Knott primary; Charges include vote buying and lying to FBI"

<sup>9</sup> "Election 2002: ABSENTEE BALLOTING; State attorney general's office investigates voting records in some counties" The Courier-Journal, November 7, 2002.

<sup>10</sup> "Election 2002: Kentucky; VOTE FRAUD; Investigators monitor 17 counties across state" The Courier-Journal, November 6, 2002.

<sup>11</sup> "Jury finds man guilty on vote-buying charges" Associated Press, November 11, 2005.

<sup>12</sup> "Man in beer vote case files suit" The Cincinnati Enquirer, March 17, 2005.

<sup>13</sup> "Two plead to vote fraud; Logan clerk sold vote; politician tried to buy votes" Charleston Gazette, December 14, 2005.

<sup>14</sup> "Logan man gets probation in vote-fraud scandal" Charleston Gazette, March 1, 2006.

himself. In 2000, with a large amount of funding from a prominent local lawyer seeking to influence a state delegate election for his wife, Mendez distributed around \$10,000 in payments to voters of \$10 to \$100. Then, in the 2004 primary, Mendez distributed around \$2,000 before his arrest.<sup>15</sup> A deputy of Mendez', the former Logan police chief, also pled guilty to a count of vote buying in 2002.<sup>16</sup>

Prosecutors focusing on neighboring Lincoln County have alleged a long-standing vote-buying conspiracy extending back to the late 1980s. The probe identified Lincoln County Circuit Clerk Greg Stowers as head of a Democratic Party faction which routinely bought votes in order to maintain office. Stowers pled guilty in December 2005 to distributing around \$7,000 to buy votes in the 2004 primary. The Lincoln County Assessor, and Stowers' longtime political ally, Jerry Allen Weaver, also pled guilty to conspiracy to buy votes.<sup>17</sup> These were accompanied by four other guilty pleas from party workers for vote buying in primaries. While most specific charges focused on vote buying in the 2004 primary, defendants also admitted buying votes as far back as the 1988, 1990, and 1992 primaries.

The leading conspirators would give party workers candidate slates and cash, which workers would then take to the polling place and use to purchase votes for amounts between \$10 and \$40 and in one instance, for liquor. Voters would be handed the slate of chosen candidates, and would then be paid upon exiting the polling place. In other cases, the elected officials in question purchased votes in exchange for non-cash rewards, including patronage positions, fixed tickets, favorable tax assessments, and home improvements.<sup>18</sup>

The West Virginia probe is ongoing, as prosecutors are scrutinizing others implicated during the proceedings so far, including a sitting state delegate, who may be under scrutiny for vote buying in a 1990 election, and one of the Lincoln county defendants who previously had vote buying charges against him dropped.<sup>19</sup>

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<sup>15</sup> "Mendez confined to home for year Ex-Logan sheriff was convicted of buying votes" Charleston Gazette, January 22, 2005.

<sup>16</sup> "Ex-Logan police sentenced for buying votes" Associated Press, February 15, 2005.

<sup>17</sup> "Clerk says he engaged in vote buying" Charleston Gazette, December 30, 2005.

<sup>18</sup> "Lincoln clerk, two others plead guilty to election fraud" Charleston Daily Mail, December 30, 2005.

<sup>19</sup> "Next phase pondered in federal vote-buying probe" Associated Press, January 1, 2006.

## Nexis Search Articles Analysis

Note: The search terms used were ones agreed upon by both Job Serebrov and Tova Wang and are available upon request. A more systematic, numerical analysis of the data contained in the Nexis charts is currently being undertaken. What follows is an overview.

Recommendation: In phase 2, consultants should conduct a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## Overview of the Articles

### *Absentee Ballots*

According to press reports, absentee ballots are abused in a variety of ways:

1. Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
2. Workers for groups and individuals have attempted to vote absentee in the names of the deceased
3. Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### *Voter Registration Fraud*

According to press reports, the following types of allegations of voter registration fraud are most common:

1. Registering in the name of dead people
2. Fake names and other information on voter registration forms
3. Illegitimate addresses used on voter registration forms
4. Voters being tricked into registering for a particular party under false pretenses

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5. Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

*Voter Intimidation and Suppression*

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio and Pennsylvania.

*"Dead Voters and Multiple Voting"*

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations



turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### *Vote Buying*

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### *Deceptive Practices*

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction

of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

#### *Non-citizen Voting*

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

#### *Felon Voting*

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has the large number of ineligible felons that remained on the voting list.

#### *Election Official Fraud*

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.



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List of Experts Interviewed

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

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Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas



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Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General

By The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald of George Mason University

General

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. For the present Analysis of the Report, the lists of voters submitted to the New Jersey Attorney General, as well as a copy of the New Jersey county voter registration files were obtained, and an initial investigation of the report's claims was conducted. The analysis shows that the lists submitted are substantially flawed.

The Analysis is based on methodology only: its authors did not gain access to original documents related to registration or original pollbook records; only recently were copies of the counties' original registration data files acquired and compiled, which contain some notable gaps; and the lists submitted to the Attorney General contain significant errors and little documentation, which complicated the analysis. Nonetheless, the analysts say that information collected is sufficient for generally assessing the quality of evidence presented to support the September 15 report. Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.

These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. Entries that supposedly "matched" other entries were apparently deemed to represent the same individual, voting twice. This methodology was similar to the method used in compiling the notoriously inaccurate Florida "purge lists" of suspected ineligible felons in 2000 and 2004. As Florida's experience shows, matching names and birth dates in the voter registration context can easily lead to false conclusions – as was almost certainly the case here.

This Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value. For example, the data used in the Report from one county appears to be particularly suspect and anomalous, and may have substantially skewed the overall results. In addition, middle initials were ignored throughout all counties, so that "J \_\_\_\_\_ A. Smith" was presumed to be the same person as "J \_\_\_\_\_ G. Smith." Suffixes were also ignored, so that fathers and sons – like "B \_\_\_\_\_ Johnson" and "B \_\_\_\_\_ Johnson, Jr." – were said to be the same person.

Underlying many of the entries on these lists, and similar lists compiled in Florida and elsewhere, is a presumption that two records with the same name and date of birth must

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represent the same person. As explained in this analysis, this presumption is not consistent with basic statistical principles. Even when votes appear to have been cast in two different cities under the same name and birth date, statistics show that voter fraud is not necessarily to blame. With 3.6 million persons who voted in the 2004 election in New Jersey, the chance that some have the same name and birth date is not far-fetched.

#### Analysis of the Claim of Double Voting by 4,497 Individuals

Attempts to match data on one list to data on another list will often yield “false positives:” two records that at first appear to be a match but do not actually represent the same person. The natural incidence of “false positives” for a matching exercise of this scale – especially when, as here, conducted with relatively little attention to detail – readily explains the ostensible number of double votes.

1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files. These records reflect two registration entries by the same person from the same address, with a notation next to each that the individual has voted. For example, 55-year-old W \_\_\_\_\_ A. Connors, living at 253 B \_\_\_\_\_ Ave. in a New York commuter suburb, is listed on the data files with an (erroneous) first registration date in 1901 and a second registration date in 1993; Mr. Connors is thus represented twice on the data files submitted. Each of these entries also indicates that W \_\_\_\_\_ A. Connors at 253 B \_\_\_\_\_ Ave voted in 2004. There is no credible indication, however, that Mr. Connors actually voted twice; indeed, given the clearly erroneous registration date on the files, it is far more likely that data error is to blame for the doubly logged vote as well.

More plausibly, the bulk of these 1,803 records may be traced to irregularities in the data processing and compilation process for one single county: the Middlesex County registration file accounts for only 10% of registered voters in the state but 78% of these alleged double votes. The suspect lists themselves contain an acknowledgment that the problem in Middlesex is probably not fraud: 99% of these Middlesex voters are labeled on the lists submitted to the Attorney General with a notation that the record is “less likely” to indicate an illegal double vote.

Another 1,257 entries of the 4,397 records probably represent similar data errors – also largely driven by a likely glitch in the Middlesex County file, which is also vastly over represented in this category. These records show ever-so-slight variations in records listed with the same date of birth at the same address: for example, the same first and last names, but different middle initials or suffixes (e.g., J \_\_\_\_\_ T. Kearns, Sr., and J \_\_\_\_\_ T. Kearns, Jr., both born the same day and living at the same address; or J \_\_\_\_\_ E. Allen and J \_\_\_\_\_ P. Allen, born the same day and living at the same address).

Approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes. For example, W \_\_\_\_\_ S. Smith, living in a northern New Jersey town, and W \_\_\_\_\_ C. Smith, living in another town two hours away, share the same date of birth but are not the same person. Nor are



T \_\_\_\_\_ Brown, living in a New York commuter suburb, and T \_\_\_\_\_ H. Brown, Jr., living in a small town over an hour west, despite the fact that they also share the same birth date. About three-quarters of the entries in this category reveal data that affirmatively conflict – for example, a middle initial (“W \_\_\_\_\_ S.”) in one case, and a different middle initial (“W \_\_\_\_\_ C.”) in another, listed at different addresses. There is absolutely no good reason to conclude that these individuals are in fact the same, when the available evidence indicates the contrary.

For approximately 200 of the entries in this category, however, less information is available. These entries show a middle initial (“J \_\_\_\_\_ W. Davis”) in one case, and no middle initial (“J \_\_\_\_\_ Davis”) in another – again, at different addresses. The lack of the middle initial is ambiguous: it could mean that one of the J \_\_\_\_\_ Davis in question has no middle name, or it could mean that the middle initial was simply omitted in a particular registration entry. Although these entries involve less conclusive affirmative evidence of a false match than the entries noted above, there is still no good reason to believe that “J \_\_\_\_\_ W. Davis” and “J \_\_\_\_\_ Davis,” at different addresses, represent the same person.

Of the individuals remaining, there are serious concerns with the accuracy of the dates of birth. Seven voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information. For 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people.

That leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P \_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P \_\_\_\_\_ S. Rosens, born on the same date in 1948 – and such coincidences are surprisingly common. For any one person, the odds of someone else having the same name and birth date is small. But because there are so many voters in New Jersey, a sizable number will have the same name and birth date simply by chance. In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

The September 15 Report makes much of the raw potential for foul play based on the unsurprising fact that there are voters who appear on the New Jersey registration rolls more than once. As noted above, many of the names identified reflect two different individuals and not simply duplicate entries. But there is no doubt that there are duplicate entries on New Jersey’s registration rolls. It is well known that voter registration rolls contain “deadwood” – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America

Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.

## The Federal Crime of Election Fraud

By Craig Donsanto

In The Federal Crime of Election Fraud, Donsanto addresses the role of the United States Department of Justice in matters of election fraud. Specifically, it answers the most frequently asked questions concerning the federal law enforcement role in election matters. Particularly, what sort of election-related conduct is potentially actionable as a federal crime, what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism, procedural, and policy considerations impact on the federalization of this type of case, and how Assistant United States Attorneys should respond to this type of complaint.

Donsanto indicates that as a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Finally, Donsanto points out that mistakes and other gaffs that inevitably occur are not included as voter fraud. Where mistakes occur on a significant enough level to potentially affect the outcome of an election, the appropriate remedy is an election contest brought by the loser seeking civil judicial redress through the appropriate state election contest process.

Along with the limits discussed above, prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be ineligible to vote under applicable state law; schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent; and, schemes to knowingly prevent voters qualified voters from voting.

Donsanto lists four situations where federal prosecution is appropriate: Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office; Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statues such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.; Where federalization is required in order to redress longstanding patters of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and, Where

there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense.

Donsanto lists four advantages to federal prosecution: voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on; voter fraud matters are always politically sensitive and very high profile endeavors at the local level. Local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed. Many states lack the broad grand jury process that exists in the federal system; and, the defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed. These include: schemes by polling officers to violate their duty under state law to safeguard the integrity of the election process by purposefully allowing void ballots to be cast (stuffing the ballot box), or by intentionally rendering fraudulent vote tallies which can be prosecuted as civil rights violations under 18 U.S.C. sections 241 or 242; schemes to stimulate or reward voter registration by offering or giving voters things having monetary value violate the "payment for registering" clause of 42 U.S.C. section 19731(c); schemes to register voters fraudulently through providing election officials materially false information about the voter's eligibility for the franchise; and, schemes to obtain and cast ballots that are materially defective in nonfederal elections can still be prosecuted under 18 U.S.C. section 1341. There are also some other federal statutes involved in election fraud cases such as 18 U.S.C. section 597 that prohibits making expenditures for the specific purpose of stimulating voters to cast ballots for candidates seeking the federal offices of Senator, Congressman or President and 42 U.S.C. section 1973i (e) that prohibits voting more than once in elections where federal candidates are on the ballot.

Donsanto lists four questions used by prosecutors in evaluating the credibility of election complaints: does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime; is the complaint sufficiently fact-specific that it provides leads for investigators to pursue; is there a federal statute that can be used to federalize the criminal activity at issue; and, is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

Finally, Donsanto indicates that election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

029477



"Tova Wang" <wang@tcf.org>

To psims@eac.gov, dromig@eac.gov

cc

05/11/2006 01:33 PM

bcc

Subject RE: research summaries

I did send you the Brennan piece, but not the other one.

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

**From:** Tova Wang

**Sent:** Thursday, May 11, 2006 12:31 PM

**To:** psims@eac.gov; dromig@eac.gov

**Subject:** research summaries

I have the feeling we didn't include these in the original batch I sent you. Could you double check and if not, would you please include them in the existing research materials? Sorry and thanks. I'm kind of doing all of this on my own in case you couldn't tell. List is coming...

Tova Andrea Wang

Democracy Fellow

**The Century Foundation**

41 East 70th Street - New York, NY 10021

phone: 212-452-7704 fax: 212-535-7534

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029478



"Tova Wang"  
<wang@tcf.org>  
05/11/2006 01:38 PM

To psims@eac.gov  
cc dromig@eac.gov, [REDACTED]  
bcc  
Subject existing literature list

Job, please double check to make sure I haven't missed anything

Tova Andrea Wang  
*Democracy Fellow*  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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Existing Literature Reviewed.doc

029479

Existing Literature Reviewed

**Reports**

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote, General Accounting Office

029480



Securing the Vote: An Analysis of Election Fraud, Lori Minnite

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

**Books**

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Foiled Again, Mark Crispin Miller

**Legal**

*Indiana Democratic Party vs. Rokita*

*Common Cause of Georgia vs. Billup*

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)



"Tova Wang"  
<wang@tcf.org>  
05/15/2006 09:07 AM

To psims@eac.gov  
cc dromig@eac.gov  
bcc  
Subject I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

Tova Andrea Wang  
Democracy Fellow  
**The Century Foundation**  
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votebuyingsummary.doc

029482

## Major Vote Buying Cases Summary

Between 2001 and 2006, allegations and convictions for vote buying and conspiracies to buy votes were concentrated in three states: Illinois, West Virginia and Kentucky.

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Deleted: which have resulted in convictions on these charges a

In East St. Louis, Illinois, nine individuals, including a former city council member and the head of the local Democratic Party, Charles Powell, Jr., were convicted or pled guilty to vote buying and conspiracy to commit election fraud during the 2004 general election. The government's conspiracy case was almost entirely based on taped conversations in which the defendants discussed buying votes for \$5 and whether this would be adequate. Federal prosecutors alleged that the vote buying was financed with \$79,000 transferred from the County Democratic Party shortly before the election, although county officials have not been charged. Four defendants were convicted of purchasing or offering to purchase at least one vote directly, while Democratic Party chairman was only convicted of conspiracy.<sup>1</sup> Earlier, three precinct officials and one precinct worker pled guilty to buying votes for \$5 or \$10 in that same election.<sup>2</sup>

Eastern Kentucky has witnessed a series of vote buying cases over the last several years. The most recent revolved around Ross Harris, a Pike County political fundraiser and coal executive, and his associate Loren Glenn Turner. Harris and Turner were convicted in September 2004 of vote buying, mail fraud, and several other counts.<sup>3</sup> Prosecutors alleged Harris and Turner conspired to buy votes and provided the necessary funds in an unsuccessful 2002 bid for Pike County district judge by former State Senator Doug Hays. Harris supplied nearly \$40,000, Turner laundered the money through straw contributors, and the cash was then disbursed in the form of \$50 checks ostensibly for 'vote hauling', the legal practice of paying campaign workers to get voters to the polls which is notorious as a cover for buying votes.<sup>4</sup> Harris attempted to influence the race on behalf of Hays in order to get revenge on Hays' opponent for a personal matter.<sup>5</sup>

A grand jury initially indicted 10 individuals in connection with the Harris and Turner case, including Hays and his wife, and six campaign workers. Of the remaining defendants, only one, Tom Varney, also a witness in the Hays case, pled guilty. The others were either acquitted of vote buying charges or had vote buying charges dropped.<sup>6</sup> Prosecutors have announced that their investigation continues into others tied to Harris and may produce further indictments.

The Harris case follows a series of trials related to the 1998 Knott County Democratic primary. Between 2003 and 2004, 10 individuals were indicted on vote buying charges, including a winning candidate in those primaries, Knott County judge-executive Donnie Newsome, who was reelected in 2002. In 2004 Newsome and a supporter were sent to jail and fined. Five other

<sup>1</sup> "Five convicted in federal vote-fraud trial" Associated Press, June 30, 2005; "Powell gets 21 months" Belleville News-Democrat, March 1, 2006.

<sup>2</sup> "Four Plead Guilty To Vote-Buying Cash Was Allegedly Supplied By St. Clair Democratic Machine" Belleville News-Democrat, March 23, 2005.

<sup>3</sup> "2 found guilty in pike county vote-fraud case; Two-year sentences possible," Lexington Herald Leader, September 17, 2004.

<sup>4</sup> "Jury weighing vote-fraud case," Lexington Herald Leader, September 16, 2004.

<sup>5</sup> "Pike Election Trial Goes To Jury" Lexington Herald Leader, January 1, 2006.

<sup>6</sup> "Former state senator acquitted of vote buying," Lexington Herald Leader, November 2, 2004.

029485

Deliberative Process  
Privilege

defendants pled guilty to vote buying charges, and three were acquitted. The primary means of vote buying entailed purchasing absentee votes from elderly, infirm, illiterate or poor voters, usually for between \$50 and \$100. This resulted in an abnormally high number of absentee ballots in the primary.<sup>7</sup> Indictments relating to that same 1998 primary were also brought in 1999, when 6 individuals were indicted for buying the votes of students at a small local college. Five of those indicted were convicted or pled guilty.<sup>8</sup>

Absentee vote buying was also an issue in 2002, when federal prosecutors opened an investigation in Kentucky's Clay County after an abnormal number of absentee ballots were filed in the primary and the sheriff halted absentee voting twice over concerns.<sup>9</sup> Officials received hundreds of complaints of vote-buying during the 2002 primary, and state investigators performed follow up investigations in a number of counties, including Knott, Bell, Floyd, Pike, and Maginoff.<sup>10</sup> No indictments have been produced so far.

So far, relatively few incidents of vote-buying have been substantially identified or investigated in the 2004 election. Two instances of vote buying in local 2004 elections have been brought before a grand jury. In one, a Casey County man was indicted for purchasing votes in a local school board race with cash and whiskey.<sup>11</sup> In the second, the grand jury chose not to indict an individual accused of offering to purchase a teenager's vote on a local proposal with beer.<sup>12</sup>

An extensive vote buying conspiracy has also been uncovered in southern **West Virginia**. The federal probe, which handed down its first indictment in 2003, has yielded more than a dozen guilty pleas to charges of vote buying and conspiracy in elections since the late 1980s. As this area is almost exclusively dominated by the Democratic Party, vote-buying occurred largely during primary contests.

The first phase of the probe focused on Logan County residents, where vote buying charges were brought in relation to elections in 1996, 2000, 2002 and 2004. In an extraordinary tactic, the FBI planted the former mayor of Logan City, Tom Esposito, as a candidate in a state legislative race. Esposito's cooperation led to guilty pleas from the Logan County Clerk, who pled guilty to selling his vote to Esposito in 1996,<sup>13</sup> and another man who took money from Esposito for the purpose of vote buying in 2004.<sup>14</sup>

Guilty pleas were also obtained in connection with former county sheriff Johnny Mendez, who pled guilty to buying votes in two primary elections in order to elect candidates including

---

<sup>7</sup> "Knott County, KY., Judge Executive sentenced on vote-buying conspiracy charges," Department of Justice, March 16, 2004.

<sup>8</sup> "6 men accused of vote fraud in '98 Knott primary; Charges include vote buying and lying to FBI"

<sup>9</sup> "Election 2002: ABSENTEE BALLOTING; State attorney general's office investigates voting records in some counties" The Courier-Journal, November 7, 2002.

<sup>10</sup> "Election 2002: Kentucky; VOTE FRAUD; Investigators monitor 17 counties across state" The Courier-Journal, November 6, 2002.

<sup>11</sup> "Jury finds man guilty on vote-buying charges" Associated Press, November 11, 2005.

<sup>12</sup> "Man in beer vote case files suit" The Cincinnati Enquirer, March 17, 2005.

<sup>13</sup> "Two plead to vote fraud; Logan clerk sold vote; politician tried to buy votes" Charleston Gazette, December 14, 2005.

<sup>14</sup> "Logan man gets probation in vote-fraud scandal" Charleston Gazette, March 1, 2006.

himself. In 2000, with a large amount of funding from a prominent local lawyer seeking to influence a state delegate election for his wife, Mendez distributed around \$10,000 in payments to voters of \$10 to \$100. Then, in the 2004 primary, Mendez distributed around \$2,000 before his arrest.<sup>15</sup> A deputy of Mendez', the former Logan police chief, also pled guilty to a count of vote buying in 2002.<sup>16</sup>

Prosecutors focusing on neighboring Lincoln County have alleged a long-standing vote-buying conspiracy extending back to the late 1980s. The probe identified Lincoln County Circuit Clerk Greg Stowers as head of a Democratic Party faction which routinely bought votes in order to maintain office. Stowers pled guilty in December 2005 to distributing around \$7,000 to buy votes in the 2004 primary. The Lincoln County Assessor, and Stowers' longtime political ally, Jerry Allen Weaver, also pled guilty to conspiracy to buy votes.<sup>17</sup> These were accompanied by four other guilty pleas from party workers for vote buying in primaries. While most specific charges focused on vote buying in the 2004 primary, defendants also admitted buying votes as far back as the 1988, 1990, and 1992 primaries.

The leading conspirators would give party workers candidate slates and cash, which workers would then take to the polling place and use to purchase votes for amounts between \$10 and \$40 and in one instance, for liquor. Voters would be handed the slate of chosen candidates, and would then be paid upon exiting the polling place. In other cases, the elected officials in question purchased votes in exchange for non-cash rewards, including patronage positions, fixed tickets, favorable tax assessments, and home improvements.<sup>18</sup>

The West Virginia probe is ongoing, as prosecutors are scrutinizing others implicated during the proceedings so far, including a sitting state delegate, who may be under scrutiny for vote buying in a 1990 election, and one of the Lincoln county defendants who previously had vote buying charges against him dropped.<sup>19</sup>

---

<sup>15</sup> "Mendez confined to home for year Ex-Logan sheriff was convicted of buying votes" Charleston Gazette, January 22, 2005.

<sup>16</sup> "Ex-Logan police sentenced for buying votes" Associated Press, February 15, 2005.

<sup>17</sup> "Clerk says he engaged in vote buying" Charleston Gazette, December 30, 2005.

<sup>18</sup> "Lincoln clerk, two others plead guilty to election fraud" Charleston Daily Mail, December 30, 2005.

<sup>19</sup> "Next phase pondered in federal vote-buying probe" Associated Press, January 1, 2006.

029485



"Tova Wang" <wang@tcf.org>

05/15/2006 09:56 AM

To dromig@eac.gov

cc psims@eac.gov

bcc

Subject RE: I'm sorry

Great -- thanks so much and apologies for the false alarm.

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

**From:** dromig@eac.gov [mailto:dromig@eac.gov]

**Sent:** Monday, May 15, 2006 8:51 AM

**To:** wang@tcf.org

**Cc:** psims@eac.gov

**Subject:** RE: I'm sorry

This article is on the CD, it is located in the "Nexis Article Charts" folder.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

"Tova Wang" <wang@tcf.org>

05/15/2006 09:26 AM

To psims@eac.gov

cc dromig@eac.gov

Subject RE: I'm sorry

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.

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

**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Monday, May 15, 2006 8:23 AM

**To:** Tova Andrea Wang

**Subject:** Re: I'm sorry

029496

Tova:

I think you did send this --- or is this a revised version of one you sent earlier? It should be on the CD in the packet you should receive today.. (Can't check that right now as I am at the clinic.) If I put anything on the CD that you want to highlight at the meeting, let me know and we'll make copies for those attending.

Peggy

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Tova Wang" [wang@tcf.org]

**Sent:** 05/15/2006 09:07 AM

**To:** Margaret Sims

**Cc:** Devon Romig

**Subject:** I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

**Tova Andrea Wang**

Democracy Fellow

**The Century Foundation**

41 East 70th Street - New York, NY 10021

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029487



"Tova Wang" <wang@tcf.org>

To psims@eac.gov

05/15/2006 09:26 AM

cc dromig@eac.gov

bcc

Subject RE: I'm sorry

History:

☞ This message has been replied to.

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.

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

**From:** psims@eac.gov [mailto:psims@eac.gov]

**Sent:** Monday, May 15, 2006 8:23 AM

**To:** Tova Andrea Wang

**Subject:** Re: I'm sorry

Tova:

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Peggy

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Tova Wang" [wang@tcf.org]

**Sent:** 05/15/2006 09:07 AM

**To:** Margaret Sims

**Cc:** Devon Romig

**Subject:** I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

**Tova Andrea Wang**

Democracy Fellow

**The Century Foundation**

41 East 70th Street - New York, NY 10021

phone: 212-452-7704 fax: 212-535-7534

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029488





"Rogers, Kathy"  
<krogers@sos.state.ga.us>  
05/16/2006 01:31 PM

To dromig@eac.gov  
cc  
bcc  
Subject RE: Voter Fraud/Voter Intimidation Working Group, May  
18th, 2006

History:  This message has been replied to.

Devon,  
Just checking – did you send this yet? I also do not have the e-ticket.  
Kathy

---

**From:** dromig@eac.gov [mailto:dromig@eac.gov]  
**Sent:** Wednesday, May 10, 2006 4:59 PM  
**To:** Rogers, Kathy  
**Subject:** RE: Voter Fraud/Voter Intimidation Working Group, May 18th, 2006

Thank you, I will fax you a copy of your travel authorization form as soon as it is available. Please remember to bring this form with you on your day of travel, there is a small possibility that you may be asked to present this form at the airport.

Best Regards,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

029489



"Marvin Brokaw"  
<marvin.brokaw@adtrav.com>  
>

05/16/2006 02:14 PM


To "Devon Romig" <dromig@eac.gov>

.cc

bcc

Subject Perez and Rogers

History:

 This message has been replied to.

Hi Devon:

Judy said you had inquired about hotel reservations for J.R. Perez and Kathy Rogers. They are booked at the Sheraton College Park Hotel for arrival on May 17 and departure on May 18. J. R. Perez confirmation number is 51423 and Kathy Rogers confirmation number is 51424. I apologize for not getting them to you earlier.

Kind Regards,  
Marvin

Marvin Brokaw  
ADTRAV Meetings and Incentives  
4555 Southlake Parkway  
Birmingham, AL 35244  
(205)444-4800 ext. 3501- phone  
(205)444-4822 - fax  
e-mail - marvin.brokaw@adtrav.com  
visit our website at www.adtrav.com

029490

Margaret Sims /EAC/GOV  
04/20/2006 07:12 PM

To "Tova Andrea Wang" <wang@tcf.org>  
cc Devon E. Romig/EAC/GOV  
bcc  
Subject Re: wg meeting

For some reason, I thought Job was not available next week. If we do set up a teleconference, I'll need to do it later in the week (Thursday afternoon or on Friday).  
Peggy

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
**From:** "Tova Wang" [wang@tcf.org]  
**Sent:** 04/20/2006 10:58 AM  
**To:** Margaret Sims  
**Cc:** Devon Romig  
**Subject:** wg meeting

Hi Peg,

I think I might have told you only that I am unavailable on the 5th. I'm actually unavailable on the 4th as well. Any news on this front? We should also arrange a conference call next week about preparing for the meeting, don't you think? Thanks Tova

Tova Andrea Wang  
Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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• 029491


Margaret Sims /EAC/GOV  
05/16/2006 01:36 PM

To: Eileen L. Colver/EAC/GOV@EAC  
cc: dromig@eac.gov  
bcc:  
Subject: Tent Cards

Attached is a list of folks who will be attending the Voting Fraud-Voter Intimidation Working Group meeting. I have asterisked the names that will require tent cards. I am working on a seating chart so that we can be sure the Ds and the Rs aren't all seated together in a "them vs. us" pattern. --- Peggy

029492

Margaret Sims /EAC/GOV  
05/16/2006 02:37 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
bcc  
Subject Re: Tent Cards 

Oops! I hit send prematurely. Here is the attachment. --- Peggy

Elieen L. Collver/EAC/GOV

05/16/2006 01:38 PM

To Margaret Sims/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Re: Tent Cards [Link](#)

Please forward list...there was no attachment. thanks!

Elle L.K Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov

Margaret Sims /EAC/GOV

05/16/2006 01:36 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Tent Cards

Attached is a list of folks who will be attending the Voting Fraud-Voter Intimidation Working Group meeting. I have asterisked the names that will require tent cards. I am working on a seating chart so that we can be sure the Ds and the Rs aren't all seated together in a "them vs. us" pattern. --- Peggy

029490



Working Group Attendees 5-18-06.doc

• 02949

**Voting Fraud-Voter Intimidation Working Group Attendees**  
**May 18, 2006**

**The Honorable Todd Rokita\***  
Indiana Secretary of State

**Kathy Rogers\***  
Director of Elections, Georgia Office of the Secretary of State

**J.R. Perez\***  
Guadalupe County Elections Administrator, TX

**Jon Greenbaum\***  
Director, Voting Rights Project, Lawyers Committee for Civil Rights Under Law  
*(Representing Working Group member Barbara Arnwine, Executive Director,  
Lawyers Committee for Civil Rights Under Law and Leader of Election Protection  
Coalition)*

**Robert Bauer\***  
Partner, Perkins Coie

**Benjamin Ginsberg\***  
Partner, Patton Boggs LLP

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage

**Barry Weinberg\***  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.  
Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto\***  
Director, Election Crimes Branch, U.S. Department of Justice

*EAC Commissioners, Consultants & Staff*

**Job Serebrov\***  
EAC Consultant

**Tova Wang\***  
EAC Consultant

**Paul DeGregorio\***  
EAC Chairman

**Ray Martinez\***  
EAC Vice Chairman

**Gavin Gilmour\***  
EAC Associate General Counsel

**Peggy Sims\***  
EAC Staff

**Edgardo Cortés\***  
EAC Staff

**Elle Collver**  
EAC Staff

**Devon Romig**  
EAC Intern

*Will stop by to greet, but will not sit at table*

**Tom Wilkey**  
EAC Executive Director

**Julie Thompson-Hodgkins**  
EAC General Counsel

**\* To be seated at table with name tents.**



Margaret Sims /EAC/GOV  
05/18/2006 12:02 PM

To dromig@eac.gov  
cc  
bcc  
Subject Seating Chart



May 18 Seating Chart.doc

029497

## VOTING FRAUD-VOTER INTIMIDATION MEETING SEATING CHART

	<p><b>Tova Wang</b> EAC Consultant</p>	<p><b>Job Serebrov</b> EAC Consultant</p>
<p><b>The Honorable Todd Rokita</b> Indiana Secretary of State</p>		<p><b>Peggy Sims</b> EAC Staff &amp; COTR</p>
<p><b>Robert Bauer</b> Partner, Perkins Coie</p>		<p><b>Craig Donsanto</b> Director, Election Crimes Branch, DOJ (<i>Technical Consultant</i>)</p>
<p><b>Mark (Thor) Hearne II</b> Partner-Member, Lathrop &amp; Gage</p>		<p><b>Ray Martinez</b> EAC Vice Chairman</p>
<p><b>Jon Greenbaum</b> Director, Voting Rights Project, Lawyers Committee for Civil Rights Under Law</p>		<p><b>Paul DeGregorio</b> EAC Chairman</p>
<p><b>Benjamin Ginsberg</b> Partner, Patton Boggs LLP</p>		<p><b>Gavin Gilmour</b> EAC Associate General Counsel</p>
<p><b>Kathy Rogers</b> Director of Elections, Georgia Office of the Secretary of State</p>		<p><b>Edgardo Cortés</b> EAC Staff</p>
	<p><b>Barry Weinberg</b> Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice</p>	<p><b>J.R. Perez</b> Guadalupe County Elections Administrator, TX</p>



"Dottie Simmons"  
<dottie.simmons@adtrav.com  
>

05/16/2006 10:27 AM

To dromig@eac.gov

cc

bcc

Subject Trave authorizations

History:  This message has been replied to.

Devon,

I have the authorization for J.R.Perez but I need to get the authorizations for the other 3 as well.

Let me know.

Dottie Simmons  
ADTRAV Meetings and Incentives  
205-444-4833-ext.3212



"Dottie Simmons"  
<dottie.simmons@adtrav.com  
>

05/16/2006 01:18 PM

To dromig@eac.gov

cc

bcc

Subject RE: Trave authorizations

Thanks!

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

**From:** dromig@eac.gov [mailto:dromig@eac.gov]

**Sent:** Tuesday, May 16, 2006 11:10 AM

**To:** dottie.simmons@adtrav.com

**Subject:** Re: Trave authorizations

Dottie,

I just received the approved authorizations, I will fax them to you now.

Thanks!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

"Dottie Simmons" <dottie.simmons@adtrav.com>

05/16/2006 10:27 AM

To dromig@eac.gov

cc

Subject Trave authorizations

Devon,

I have the authorization for J.R.Perez but I need to get the authorizations for the other 3 as well.

Let me know.

Dottie Simmons  
ADTRAV Meetings and Incentives  
205-444-4833-ext.3212

029500



Devon E. Romig/EAC/GOV

04/19/2006 04:20 PM

To assisstant@sos.in.gov

cc

bcc

Subject Voting Fraud - Voter Intimidation Project Working Group

Dear Nathan,

Here is the information that you requested.

Secretary Rokita was recommended by one of our consultants, Job Serebrov, to participate in the Voting Fraud - Voter Intimidation Project Working Group. This working group will last for one day and it will be held in Washington, DC. The purpose of this working group is to bring together experts and representatives of organizations that are knowledgeable about the topics of voting fraud and voter intimidation in order to foster a discussion on related issues and preliminary research.

The following are a list of the other potential participants; Barbara Arnwine, Robert Bauer, Craig Donsanto, Mark Hearne III, David Norcross, Kathy Rogers, and Barry Weinberg

We are hoping to hold this meeting in May, between the 1st and the 19th (excluding the following dates; 4, 5, 6, 7, 13, 14). Please let me know any and all of the dates that would be the most convenient for Secretary Rokita.

Best,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377  
[www.eac.gov](http://www.eac.gov)

029501  
Deliberative Process  
Privilege



Devon E. Romig/EAC/GOV

04/19/2006 04:57 PM

To assistant@sos.in.gov

cc

bcc

Subject Voting Fraud - Voter Intimidation Project Working Group

Dear Nathan,

Here is the information that you requested.

Secretary Rokita was recommended by one of our consultants, Job Serebrov, to participate in the Voting Fraud - Voter Intimidation Project Working Group. This working group will last for one day and it will be held in Washington, DC. The purpose of this working group is to bring together experts and representatives of organizations that are knowledgeable about the topics of voting fraud and voter intimidation in order to foster a discussion on related issues and preliminary research.

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We are hoping to hold this meeting in May, between the 1st and the 19th (excluding the following dates; 4, 5, 6, 7, 13, 14). Please let me know any and all of the dates that would be the most convenient for Secretary Rokita.

Best,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377  
[www.eac.gov](http://www.eac.gov)

• 029502

**Deliberative Process  
Privilege**



Devon E. Romig/EAC/GOV

06/05/2006 01:36 PM

To Bryan Whitener/EAC/GOV

cc

bcc

Subject Voter Fraud/Intimidation Working Group

Bryan,

The date of this meeting was May 18 , 2006

Thanks,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029503



Devon E. Romig/EAC/GOV

05/09/2006 09:32 AM

To bschuler@lathropgage.com, mhearne@lathropgage.com,  
jrperez50@sbcglobal.net, assistant@sos.in.gov,  
krogers@sos.state.ga.us

cc Margaret Sims/EAC/GOV@EAC

bcc

Subject Voter Fraud/Voter Intimidation Working Group, May 18th,  
2006

Dear Meeting Participants,

Thank you for confirming your participation in the upcoming Voter Fraud/Voter Intimidation Working Group Meeting in Washington, D.C.. This meeting will take place at our office from 1:00 PM to 5:30 PM on Thursday May 18th, 2006.

The Election Assistance Commission (EAC) will cover the cost of your flight, the cost of your hotel room and provide you with a daily per diem. The cost of the airfare and the hotel stay will be paid directly by the EAC, as long as you book your travel through Adventure Travel.

To coordinate your flight and hotel stay, please contact Marvin Brokaw of Adventure Travel at (205) 444-4800, ext. 3501. Please note that the eligible dates of the hotel accommodation include the evenings on May 17th and May 18th. Once you have contacted him and you have received the itinerary via e-mail you must forward me a copy immediately so that I can complete a travel authorization form.

I have included two attachments with this email; the first attachment is a letter that contains important information that you will need to know before calling the travel agent and the second attachment provides some general information that should help you get around the city during your trip.

In addition to your travel itinerary, I will also need the following information by the close of business this Friday May 12, 2006 in order to complete your travel authorization:

Full Name:

Title:

Entity for whom you work:

Address to Which the Reimbursement Check Will Be Mailed:

Work Telephone:

Fax Number:

Social Security #: (if uncomfortable e-mailing this, feel free to call me):

Feel free to contact me with any questions.

Sincerely,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov



Per Diem Letter VFVI.doc



Logistics Sheet VFVI.doc

029504





U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

Dear Meeting Participant:

On behalf of the entire U.S. Election Assistance Commission (EAC), I would like to thank you for agreeing to attend the Voter Fraud/Voter Intimidation Working Group Meeting on May 18th, 2006.

The EAC will pay for your roundtrip airfare and hotel, and based on your dates of travel to attend our meeting and will pay a daily per diem to cover meals not provided by EAC and incidental expenses (M&IE). Car rental costs or mileage incurred through the use of a rental car are not reimbursable, as well as costs associated with redcaps, baggage delivery, long distance telephone calls, pay per view cable, room service, laundry service, and wet bars. These charges, if used, must be borne by you at the time services were rendered. **Ground transportation (ex. metro, bus, taxi), hotel parking, airport parking, and any mileage incurred using your privately owned vehicle will be reimbursed.**

The EAC will provide hotel accommodations. If you are traveling from one of the following States than you are authorized for a two-night hotel room stay in Washington D.C.; Georgia, Indiana, Missouri, New Mexico and Texas.

The per diem rates listed below provide a guide for you to use in order to calculate your per diem for your stay. A discounted per diem rate is applicable if any travel occurs on that day. For example, if you arrive on May 17th and leave on May 18th, both of these days will be considered travel days and you will receive the discounted rate. I will provide you with a travel reimbursement form at the meeting.

The current federal per diem rates are as follows;

- Meals & Incidentals Expenses (M&IE) = \$64 per day (the discounted rate for the first and last day of travel is \$48)
- Mileage for Personally Owned Vehicle = \$ .445 per mile

If you have any questions, please do not hesitate to contact me at (202) 566-2377 or via email at [dromig@eac.gov](mailto:dromig@eac.gov).

029505



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

## May 18, 2006 – EAC Meeting

### Logistics Fact Sheet

**Date:** Thursday, May 18th, 2006

**Time:** 1:00PM – 5:00PM

**Location:** U.S. Election Assistance Commission – Conference Room  
1225 New York Ave, NW, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100

**Transportation:** **Via Metro** – take blue, orange, or red line to Metro Center; walk up to New York Ave (2 blocks from Metro – corner of New York Ave and 12<sup>th</sup> St.)  
**To EAC offices**

#### **Bus service at Metro Center:**

11Y (on 14th St.)

42 (on 11th St.)

52, 53, 54 (on 14th St.; also 54 on F St. between 11th & 14th)

66, 68 (on 11th St.)

80 (on H St.)

D1, D3, D6 (on 13th St.)

G8 (on 11th St. north of H, on H St. west of 11th)

P17, P19 (inbound on 11th St.; outbound on 13th St.)

P6 (on 11th St.)

S2, S4 (on 11th St.)

W13 (inbound on 11th St.; outbound on 13th St.)

X2 (on H St.)

#### **From Reagan National Airport:**

- take blue line Metro towards Largo Town Center; exit at Metro Center station
- taxi services available (fare will be approximately \$15-\$20)

#### **Parking:**


Parking garage available behind building on I Street, NW.

**Contact:** For more information, contact the U.S. Election Assistance Commission at (202) 566-3100.

029506



Devon E. Romig/EAC/GOV  
05/16/2006 01:09 PM

To "Dottie Simmons"  
<dottie.simmons@adtrav.com>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Trave authorizations 

Dottie,

I just received the approved authorizations, I will fax them to you now.

Thanks!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
"Dottie Simmons" <dottie.simmons@adtrav.com>



"Dottie Simmons"  
<dottie.simmons@adtrav.com  
>  
05/16/2006 10:27 AM

To dromig@eac.gov  
cc  
Subject Trave authorizations

Devon,

I have the authorization for J.R.Perez but I need to get the authorizations for the other 3 as well.

Let me know.

Dottie Simmons  
ADTRAV Meetings and Incentives  
205-444-4833-ext.3212

029507



Devon E. Romig/EAC/GOV  
05/09/2006 05:04 PM

To "Dottie Simmons"  
<dottie.simmons@adtrav.com>@GSAEXTERNAL  
cc  
bcc

Subject RE: Kathy Rogers itinerary 

Yes, I have received the itineraries for Rogers, Hearne and Perez.

Thanks!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029508



Devon E. Romig/EAC/GOV


05/09/2006 04:41 PM

To "Dottie Simmons"

<dottie.simmons@adtrav.com>@GSAEXTERNAL

cc

bcc

Subject RE: Kathy Rogers itinerary 


Thanks!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029509



Devon E. Romig/EAC/GOV  
05/09/2006 04:26 PM

To "Dottie Simmons"  
<dottie.simmons@adtrav.com>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Kathy Rogers itinerary 

Ms. Simmons,

Thanks again for the itineraries. Can you tell me what hotels that J.R. Perez and Kathy Rogers are staying at?


Best,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029510



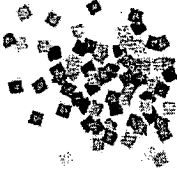
Devon E. Romig/EAC/GOV  
05/09/2006 03:25 PM

To "Dottie Simmons"  
<dottie.simmons@adtrav.com>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Travel Itinerary 18MAY HEARNE 

Thanks so much!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029511



Devon E. Romig/EAC/GOV

05/11/2006 12:46 PM

To [dottie.simmons@adtrav.com](mailto:dottie.simmons@adtrav.com)

cc

bcc

Subject Fax number

Dottie,

Can you send me your fax number? Once I get it I will start faxing the travel authorizations to you.

Thanks,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029512





Devon E. Romig/EAC/GOV

05/15/2006 02:25 PM

To Elieen L. Collver/EAC/GOV@EAC

cc Laiza N. Otero/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC

bcc

Subject Re: working group 

I have attached the list of the working groups participants. Peggy, you may want to double check this list incase I have left anyone out.

In place of name tags we just used the tent cards for the APIA working group. This seemed to be effective because it was easier to identify the person who was speaking but we could use both.



Meeting Participants for VFVI Working Group.doc

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
Elieen L. Collver/EAC/GOV



Elieen L. Collver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC

Subject working group

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov

029513

### Meeting Participants for VFVI Working Group

OUT OF STATE PARTICIPANTS						
Participant	Title	Point of Contact	Email	Phone Number	City, State	
Mark (Thor) Hearne	Partner-Member	Bethany Schuler	bschuler@lathrogpage.com; mhearne@lathrogpage.com	BS (314) 613 – 2510; MH314-613-2522; Fax314-613-2550	St. Louis, MO	
J.R. Perez	Election Administrator		jrperetz50@sbcglobal.net	830-303-6363; Fax 830-303-6373	Seguin, TX	
Todd Rokita	Secretary of State	Nathan Cane	assistant@sos.in.gov	NC317-232-6536; TR 317-232-6531; Fax 317-233-3283	Indianapolis, IN	
Kathy Rogers	Director of Elections		krogers@sos.state.ga.us	404-657-5380; Fax 404-651-9531	Atlanta, GA	
LOCAL AREA PARTICIPANTS (NOT ELIGIBLE FOR TRAVEL)						
Jon Greenbaum (Representing Barbara Amwine)	Executive Director	Valerie Johnson	vjohnson@lawyerscommittee.org; barnwine@lawyerscommittee.org	VJ (202) 662-8382; BA 202-662-8300; Fax 202-783-0857	Washington, DC	
Robert F. Bauer	Partner	Donna Lovecchio	dlovecchio@perkinscoie.com; Rbauer@perkinscoie.com	202-434-1602; Fax 202-434-1690	Washington, DC	
Benjamin L. Ginsberg	Partner					
Barry Weinberg			weintr@verizon.net	301-493-5343	Bethesda, MD	
Craig C. Donsanto	Director		cdonsanto@usdoj.gov	202-514-1421; Fax 202-514-3003	Washington, DC	

Not emailed

029515




Devon E. Romig/EAC/GOV

05/15/2006 03:28 PM

To Elieen L. Collver/EAC/GOV@EAC

cc Margaret Sims/EAC/GOV@EAC

bcc

Subject Re: working group 

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
Elieen L. Collver/EAC/GOV




Elieen L. Collver/EAC/GOV

05/15/2006 03:19 PM

To Margaret Sims/EAC/GOV@EAC

cc dromig@eac.gov

Subject Re: working group 

Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle

Elle L.K Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov

Margaret Sims/EAC/GOV

05/15/2006 02:48 PM

To Elieen L. Collver/EAC/GOV@EAC

cc dromig@eac.gov

Subject Re: working group Link

029516

Elle:

I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Elleen L. Colver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC

Subject working group

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!


Elle

Elle L.K Colver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov

029517



Devon E. Romig/EAC/GOV  
05/11/2006 03:51 PM

To "J. R. Perez" <jrperez50@sbcglobal.net>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Travel Authorization Form 

You are welcome!

Adventure Travel should send you all of your travel information once they verify the travel authorization. If you do not receive your itinerary by Monday morning please let me know.

It is a good idea to carry your travel authorization with you at the airport because occasionally (although very rarely) some of our guests have been asked to show their authorization numbers.

Let me know if you have any other questions.

Best Regards,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
"J. R. Perez" <jrperez50@sbcglobal.net>



"J. R. Perez"  
<jrperez50@sbcglobal.net>  
05/11/2006 03:41 PM

To dromig@eac.gov  
cc  
Subject RE: Travel Authorization Form

Thank you, Devon. I have not heard from the travel agency since I picked the travel times, and do not have an itinerary, nor hotel information. The last time I traveled to the EAC I did not receive this form till afterwards. Is there something I may need this for in advance or during my travel?

J.R. Perez  
Elections Administrator  
Guadalupe County

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

**From:** dromig@eac.gov [mailto:dromig@eac.gov]  
**Sent:** Thursday, May 11, 2006 12:12 PM  
**To:** jrperez50@sbcglobal.net  
**Subject:** Travel Authorization Form

Mr. Perez,

029518

I have just faxed your travel authorization form.

Best Regards,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029519



Devon E. Romig/EAC/GOV

05/09/2006 12:52 PM

To "J. R. Perez" <jrperez50@sbcglobal.net>@GSAEXTERNAL

cc

bcc

Subject RE: Voter Fraud/Voter Intimidation Working Group, May  
18th, 2006

Thank you, I will fax you a copy of your travel authorization form as soon as it is available. Please remember to bring this form with you on your day of travel, there is a small possibility that you may be asked to present this form at the airport.

Best Regards,

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029520




Devon E. Romig/EAC/GOV

06/07/2006 10:08 AM

To Margaret Sims/EAC/GOV

cc jwilson@eac.gov

bcc

Subject Re: Transcript of 5-18-06 Working Group Meeting 

Tim at Carol reporting said the transcript will be here today or tomorrow.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

06/07/2006 09:47 AM

To dromig@eac.gov, jwilson@eac.gov

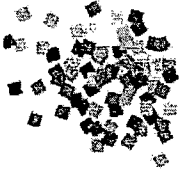
cc

Subject Transcript of 5-18-06 Working Group Meeting

Have we had any word about the transcript for the 5-18-06 Voting Fraud-Voter Intimidation Working Group meeting? Our consultants each need a copy so that they can draft the final report? If we have it in electronic form, so much the better. --- Peggy

029521






Devon E. Romig/EAC/GOV

06/07/2006 10:01 AM

To Margaret Sims/EAC/GOV

cc jwilson@eac.gov

bcc

Subject Re: Transcript of 5-18-06 Working Group Meeting 

I will call the transcript company and ask them about it.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

06/07/2006 09:47 AM

To dromig@eac.gov, jwilson@eac.gov

cc

Subject Transcript of 5-18-06 Working Group Meeting

Have we had any word about the transcript for the 5-18-06 Voting Fraud-Voter Intimidation Working Group meeting? Our consultants each need a copy so that they can draft the final report? If we have it in electronic form, so much the better. --- Peggy

029522



Devon E. Romig/EAC/GOV  
05/25/2006 02:37 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Summary for VFVI working group meeting

Peggy,

Here is the summary that you requested. Let me know if this works.

Thanks!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)



VFVI Meeting Summary.doc

029523



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **Voting Fraud – Voter Intimidation Working Group Meeting Summary**

### *Overview of Current Research Project*

- Current research performed Tova Wang and Job Serebrov
  - the current research has been a challenge because of the need for the information to be collected and analyzed in a scientific manner
    - especially when working the “perception” of intimidation
- Both consultants cross-checked each others work in order to maintain a bipartisan balance
- Literature was anecdotal, not much follow-up on the articles
- No interviews with DA's and only one interview with a judge
- Absentee ballots seemed to be the biggest problem
- The articles found that most of reported vote buying is concentrated in the Midwest and the South
- Very little non-citizen voting, dead voting and impersonation was reported

### *Purpose of Current Working Group*

- To provide background information for current research
- To brainstorm for potential research ideas

### *Talking Points of Working Group*

- Discussion of value of research because of the language of section 241 of HAVA; where is the methodology?
- History of the definition of “fraud”
- Most voter fraud happens outside of the polling centers
- Research must address existing problems, not perceived problems
- Intimidation is a subset of suppression, and considered to be physical or economic threat and/or coercion
- Suppression that is not a form of intimidation is intended to interfere with voting rights and the election process without physical or economic threat and/or coercion
- Department of Justice primarily investigated individual cases of voter fraud
- Risk analysis can be used as an indicator of legitimacy for the need to allocate funding to research in the area of voter fraud
- Current statewide database list will be useful in the deterrence of voter fraud

029524

### *Ideas for Future EAC Activities*

- Bipartisan observers/poll watchers
  - Used in the collection of data
  - Used to deter fraud
- Surveys
  - Survey of state laws
    - Specific states
  - Survey of local election officials
  - Voter surveys (this suggestion was rejected by the panel)
  - Survey state election offices
  - Survey use of administrative complaint procedures
- Follow up on initial reports of fraud/intimidation from the survey of news articles
- Better poll worker training
- Longer hours for polling centers
  - Including hours on weekends
- Fewer polling center locations
  - More qualified poll workers
- Absentee balloting process
  - Methodology of “for cause” absentee voting
- Risk-analysis for voting fraud
  - Who?
  - What part of process?
    - ease of use
  - Which elections?
- Broaden scope of interviews to local officials and district attorneys
- Analysis
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers
  - State District Court Cases
  - Determination of challenging a voter at the polls (in some states there is little or no cause required to challenge a voters eligibility)
- Academic statistical research
- Search and match procedures for voter registration list maintenance and voter fraud identification (subject to confirmation)
- Election courts
- Model statutes



Devon E. Romig/EAC/GOV  
05/19/2006 10:15 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Summary of notes for VFVI meeting

Peggy,

Here are the notes from the meeting.



Summary of VFVI Meeting.doc

Thanks!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
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[www.eac.gov](http://www.eac.gov)

029520



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

❖ Overview of EAC Research

- Poll worker recruiting, training and retention
- Management guidelines for voting systems
- Vote counting and recounting
- Provisional voting
- Voter Identification

❖ Recommendations for Future Research by Working Group Members

- Bipartisan observers/poll watchers
  - Used in the collection of data
  - Used to deter fraud
- Surveys
  - Survey of state laws
    - Specific states
  - Survey of local election officials
  - Voter surveys (this suggestion was rejected by the panel)
  - Survey state election offices
  - Survey use of administrative complaint procedures
- Follow up on initial reports of fraud/intimidation from the survey of news articles
- Absentee balloting process
  - Methodology of "for cause" absentee voting
- Risk-analysis for voting fraud
  - Who?
  - What part of process?
    - ease of use
  - Which elections?

029527

**Deliberative Process  
Privilege**

- Broaden scope of interviews to local officials and district attorneys
- Analysis
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers
- Academic statistical research
- Search and match procedures for voter registration list maintenance and voter fraud identification (subject to confirmation)
- Election courts
- Model statutes



Devon E. Romig/EAC/GOV  
05/10/2006 10:44 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Court Reporter for Working Group Meeting

Great, I will get it scheduled.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
05/10/2006 10:32 AM

To dromig@eac.gov  
cc  
Subject Fw: Court Reporter for Working Group Meeting

Devon:

We have the OK from Tom to obtain a court reporter. Per his response (attached), please coordinate with Joyce. Also, I understand the reporter for the Asian Language Working Group arrived late. Please find out how we can ensure the one for our meeting arrives on time. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/10/2006 10:31 AM -----

Thomas R. Wilkey/EAC/GOV

05/10/2006 10:29 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Fw: Court Reporter for Working Group Meeting [Link](#)

Yes. please let Joyce know and she will get someone  
Tom

029529



Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

Margaret Sims /EAC/GOV

05/10/2006 10:26 AM

To twilkey@eac.gov  
cc DScott@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Fw: Court Reporter for Working Group Meeting

Tom:

I understand that EAC hired a court reporter for the Asian Language Working Group meeting. I would like to do the same for the May 18 Voting Fraud-Voter Intimidation Working Group meeting, but I did not include funds in my budget for this service. Do we have funds that could be used for this purpose? (See Devon's cost estimate below.) --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/10/2006 10:18 AM -----  
Devon E. Romig/EAC/GOV

05/10/2006 09:54 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Court reporter

Peggy,

I spoke to the people who usually handle the EAC court reporting. They charge \$9.00 per page with an average of 40 pages per hour. This service would cost about \$1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

029530

I can also check around for different prices.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
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202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029531



Devon E. Romig/EAC/GOV

05/10/2006 09:54 AM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Court reporter

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The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

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029532



Devon E. Romig/EAC/GOV

05/09/2006 04:43 PM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Hotel for Job

Peggy,

A possible hotel suggestion for Job might be the Sheraton College Park in Beltsville, MD. They have room availability for the nights of the 17th and the 18th for \$159.00 a night.

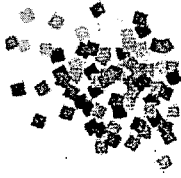
They have what is called the Sheraton Sweet Sleeper Bed. More information at:

[http://www.starwoodhotels.com/promotions/promo\\_landing.html?category=sweet\\_sleeper](http://www.starwoodhotels.com/promotions/promo_landing.html?category=sweet_sleeper)

This hotel is a little out of the way but the members of the Asian Language Working Group and others have stayed there. The hotel does offer a shuttle to and from Reagan airport and the metro.

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029533



**Devon E. Romig/EAC/GOV**

05/09/2006 11:34 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Re: May 18 Meeting 

No, but I have left a message for her assistant and I am waiting for her to return my call. I will let you know as soon as I hear anything.

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Washington, DC 20005  
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202.566.3128 fax  
www.eac.gov  
Margaret Sims/EAC/GOV

**Margaret Sims /EAC/GOV**

05/09/2006 11:19 AM

To dromig@eac.gov

cc

Subject May 18 Meeting

Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

029534



Devon E. Romig/EAC/GOV

05/09/2006 11:12 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Fw: May 18th Meeting at EAC

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

----- Forwarded by Devon E. Romig/EAC/GOV on 05/09/2006 11:12 AM -----



"Marvin Brokaw"

<marvin.brokaw@adtrav.com

>

05/09/2006 11:04 AM

To dromig@eac.gov

cc

Subject RE: May 18th Meeting at EAC

Hi Devon:

We have heard from Mark Hearne and Todd Rokita. They are both flying in and out on the 18th and will not need hotel rooms. We're kind of waiting to see if Perez and Rogers need rooms before booking any hotel. As soon as we get approval of Hearne and Rokita air schedules and get them booked, we'll forward their itineraries to you.

Kind Regards,  
Marvin

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

**From:** dromig@eac.gov [mailto:dromig@eac.gov]

**Sent:** Tuesday, May 09, 2006 8:31 AM

**To:** marvin.brokaw@adtrav.com

**Cc:** psims@eac.gov

**Subject:** May 18th Meeting at EAC

Hello Marvin,

I just wanted to follow up with the voicemail message that I left for you yesterday. We will be holding a meeting at our offices in Washington DC on May 18, 2006. I have informed the out of state attendees to contact you for their travel arrangements.

We have been authorized to pay for the attendees airfare and hotel arrangements. Please note that all of the participants are authorized for a two night hotel room stay, as long as the dates are May 17th and 18th.

I attached the list of the meeting participants that will be contacting you about their travel arrangements for the May 18th meeting in Washington DC.

029535

Let me know if you have any questions for me or if you need any more information from me.

Thanks for your help!

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)

029536



Devon E. Romig/EAC/GOV

05/04/2006 12:33 PM

To Margaret Sims/EAC/GOV

cc Edgardo Cortes/EAC/GOV@EAC

bcc

Subject VFVI Working Group

Peggy,

I have called each of the participants. So far I have a definite confirmation from Kathy Rogers.

Here is the list of the out of town participants for the Voter Fraud/Voter Intimidation Project Working Group:

Mark Hearne II - St. Louis, MO

Todd Rokita - Indianapolis, IN

Kathy Rogers - Atlanta, GA

*Possible Participant.*

Patrick Rogers - New Mexico

Thanks,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

029537





Devon E. Romig/EAC/GOV  
05/03/2006 03:23 PM

To Margaret Sims/EAC/GOV  
cc  
bcc  
Subject David Norcross

Peggy,

I just spoke to Mr. Norcross's assistant, he cannot attend the meeting on the 18th, he will be out of town at another event.

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

029538



Devon E. Romig/EAC/GOV

05/03/2006 10:50 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Secretary Rokita's schedule

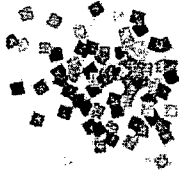
Peggy,

I just spoke to Nathan Cane (Secretary Rokita's assistant). He did not have any new information but they are going to have a scheduling meeting tomorrow morning and he will ask specifically about the afternoon of May 18th. I also reminded him to find out any of the days that he was not available or any of the days that he had could attend the meeting in the morning or the afternoon.

Thanks,

Devon

029539



Devon E. Romig/EAC/GOV

05/02/2006 01:11 PM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Re: Barbara Arnwine 

Peggy,

I just received an update about Ms. Arnwine's schedule. She is not available on May 9th.

Thanks,

Devon

029540



Devon E. Romig/EAC/GOV

04/24/2006 04:41 PM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Updated scheduling list and Contact info

Peggy,

Here is the most updated version of the list that I have available.



Work Group Contact-Availability Info.xls

Thanks,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

029541

**AVAILABILITY IN MAY**

FIRST NAME	LAST NAME	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Barbara	Arnwine																				
Robert F.	Bauer																				
Craig C.	Donsanto															?	?	?	?	?	
Mark (Thor)	Hearne II									?	?										
David A.	Norcross																				
Todd	Rokita																				
Kathy	Rogers																				
Barry	Weinberg															?	?	?	?	?	

	Available
	Not Available
	Consultants Not Available

029542

**VOTING FRAUD-VOTER INTIMIDATION PROJECT WORKING GROUP CONTACT INFORMATION AS OF 4-3-06**

FIRST NAME	LAST NAME	TITLE	ADDRESS 1	ADDRESS 2	ADDRESS 3	CITY	STATE	ZIP	SALUTATION	PHONE	FAX
Barbara	Amwine	Executive Director	Lawyers Committee for Civil Rights Under Law	1401 New York Avenue, NW, Suite 400		Washington	DC	20005	Ms.	202-662-8300	202-783-0857
Robert F.	Bauer	Partner	Perkins Coie, LLP	607 Fourteenth Street		Washington	DC	20005-2011	Mr.	202-434-1602	202-434-1690
Craig C.	Donsanto	Director	Election Crimes Branch	U.S. Department of Justice	1400 New York Avenue, NW, 12th Floor	Washington	DC	20005	Mr.	202-514-1421	202-514-3003
Mark (Thor)	Hearne II	Partner-Member	Lathrop & Gage, LC	The Equitable Building	10 South Broadway,	St. Louis	MO	63102-1708	Mr.	314-613-2522	314-613-2550
David A.	Norcross	Sustaining Member	Blank Rome, LLP	Watergate, Twelfth Floor	600 New Hampshire Avenue, N.W	Washington	DC	20037	Mr.	202-772-5898	202-772-5876
Todd	Rokita	Secretary of State	State House, Room 201	200 West Washington Street		Indianapolis	IN	46204	Secretary	317-232-6531, Asst 317-232-6536	317-233-3283
Kathy	Rogers	Director of Elections	Office of the Secretary of State	West Tower Suite 1104	2 Martin Luther King, Jr. Drive, SE	Atlanta	GA	30334-1505	Ms.	404-657-5380	404-651-9531
Barry	Weinberg								Mr.	301-493-5343	

029543

**EMAIL**

[barnwine@lawyerscommittee.org](mailto:barnwine@lawyerscommittee.org)

[Rbauer@perkinscoie.com](mailto:Rbauer@perkinscoie.com)

[cdonsanto@usdoj.gov](mailto:cdonsanto@usdoj.gov)

[mheame@lathropgage.com](mailto:mheame@lathropgage.com)

Maria Rivers, Assistant:

[Rivers@BlankRome.com](mailto:Rivers@BlankRome.com)

[norcross@blankrome.com](mailto:norcross@blankrome.com)

Nathan Cane, Executive Assistant

[assistant@sos.in.gov](mailto:assistant@sos.in.gov)

[krogers@sos.state.ga.us](mailto:krogers@sos.state.ga.us)

[weinutr@verizon.net](mailto:weinutr@verizon.net)

029544



**Devon E. Romig/EAC/GOV**

05/09/2006 11:34 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Re: May 18 Meeting

No, but I have left a message for her assistant and I am waiting for her to return my call. I will let you know as soon as I hear anything.

Devon Romig  
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1225 New York Ave. NW, Suite 1100  
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202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
Margaret Sims/EAC/GOV

**Margaret Sims /EAC/GOV**

05/09/2006 11:19 AM

To dromig@eac.gov

cc

Subject May 18 Meeting

Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

029545





Devon E. Romig/EAC/GOV

05/09/2006 11:12 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Fw: May 18th Meeting at EAC

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----- Forwarded by Devon E. Romig/EAC/GOV on 05/09/2006 11:12 AM -----



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05/09/2006 11:04 AM

To dromig@eac.gov

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029546

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029547



Devon E. Romig/EAC/GOV

05/04/2006 12:33 PM

To Margaret Sims/EAC/GOV

cc Edgardo Cortes/EAC/GOV@EAC

bcc

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*Possible Participant:*

Patrick Rogers - New Mexico

Thanks,

Devon Romig

U.S. Election Assistance Commission

1225 New York Ave. NW - Suite #1100

Washington, D.C. 20005

(202)566-2377

029548



Devon E. Romig/EAC/GOV

05/03/2006 03:23 PM

To Margaret Sims/EAC/GOV

cc

bcc

Subject David Norcross

Peggy,

I just spoke to Mr. Norcross's assistant, he cannot attend the meeting on the 18th, he will be out of town at another event.

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

029549



Devon E. Romig/EAC/GOV  
05/03/2006 10:50 AM

To Margaret Sims/EAC/GOV  
cc  
bcc  
Subject Secretary Rokita's schedule

Peggy,

I just spoke to Nathan Cane (Secretary Rokita's assistant). He did not have any new information but they are going to have a scheduling meeting tomorrow morning and he will ask specifically about the afternoon of May 18th. I also reminded him to find out any of the days that he was not available or any of the days that he had could attend the meeting in the morning or the afternoon.


Thanks,

Devon

029550



Devon E. Romig/EAC/GOV  
05/02/2006 01:11 PM

To Margaret Sims/EAC/GOV  
cc  
bcc  
Subject Re: Barbara Arnwine 

Peggy,


I just received an update about Ms. Arnwine's schedule. She is not available on May 9th.

Thanks,

Devon

029551

Devon E. Romig/EAC/GOV  
04/03/2006 04:21 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: DOJ Training Materials 

Peggy,

The sections that you listed below are also empty in our copy. I have attached a copy of the complete table of contents with all of the section that are empty in our copy of the 2004 DOJ training binder.

Thanks,

Devon



TOC-BallotAccess2.doc

Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
04/03/2006 03:47 PM

To dromig@eac.gov  
cc  
Subject DOJ Training Materials

Devon:

One of our consultants noted that there are several sections appear to be missing from the 2004 DOJ training binder. She wasn't sure if it is because of what DOJ sent over to EAC or a problem in the photocopying. From what she can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. I think we must have provided the T of C because I don't see one in the binder. Can you please retrieve the binder and check this out for me? Thanks! --- Peggy

029558

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**Devon E. Romig/EAC/GOV**

05/09/2006 11:34 AM

To Margaret Sims/EAC/GOV

cc

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Subject Re: May 18 Meeting

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Margaret Sims/EAC/GOV

**Margaret Sims /EAC/GOV**

05/09/2006 11:19 AM

To dromig@eac.gov

cc

Subject May 18 Meeting

Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

029554



Devon E. Romig/EAC/GOV

05/03/2006 10:50 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Secretary Rokita's schedule

Peggy,

I just spoke to Nathan Cane (Secretary Rokita's assistant). He did not have any new information but they are going to have a scheduling meeting tomorrow morning and he will ask specifically about the afternoon of May 18th. I also reminded him to find out any of the days that he was not available or any of the days that he had could attend the meeting in the morning or the afternoon.

Thanks,

Devon

029555



Devon E. Romig/EAC/GOV

05/09/2006 11:34 AM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Re: May 18 Meeting 

No, but I have left a message for her assistant and I am waiting for her to return my call. I will let you know as soon as I hear anything.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
[www.eac.gov](http://www.eac.gov)  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

05/09/2006 11:19 AM

To [dromig@eac.gov](mailto:dromig@eac.gov)

cc

Subject May 18 Meeting

Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

029556



Devon E. Romig/EAC/GOV  
05/15/2006 09:51 AM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc psims@eac.gov  
bcc  
Subject RE: I'm sorry

This article is on the CD, it is located in the "Nexis Article Charts" folder.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>  
05/15/2006 09:26 AM

To psims@eac.gov  
cc dromig@eac.gov  
Subject RE: I'm sorry

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.

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

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Monday, May 15, 2006 8:23 AM  
**To:** Tova Andrea Wang  
**Subject:** Re: I'm sorry

Tova:

I think you did send this --- or is this a revised version of one you sent earlier? It should be on the CD in the packet you should receive today.. (Can't check that right now as I am at the clinic.) If I put anything on the CD that you want to highlight at the meeting, let me know and we'll make copies for those attending.  
Peggy

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Tova Wang" [wang@tcf.org]  
**Sent:** 05/15/2006 09:07 AM  
**To:** Margaret Sims  
**Cc:** Devon Romig  
**Subject:** I'm sorry

029557

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

Tova Andrea Wang  
Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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029558



Devon E. Romig/EAC/GOV

05/02/2006 09:45 AM

To wang@tcf.org

cc Margaret Sims/EAC/GOV@EAC

bcc

Subject Voting Fraud/Voter Intimidation Project Working Group

Dear Tova,

I am working with Peggy Sims in order to set a date for the Voting Fraud/Voter Intimidation Project Working Group. I have been trying to reach Barbara Arnwine in order to find out which days in May she is potentially available to attend this meeting but all of my attempts have been unsuccessful.

I would appreciate any help that you could provide in this matter.

Sincerely,

Devon Romig  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite #1100  
Washington, D.C. 20005  
(202)566-2377

029559



## Woman charged with violating election law

04/30/03

**TOM GORDON**  
News staff writer

AL

A Bullock County woman has been charged with violating Alabama election law by removing a voter's absentee ballot from her mailbox during last year's primary runoff.

A county grand jury last week issued an indictment charging Mary Sue Martin of Union Springs with hindering Lisa Calloway's right to vote. If convicted, Martin could be fined no less than \$50 nor more than \$500.

District Attorney Boyd Whigham said Martin has denied any wrongdoing and will be arraigned next week before Circuit Judge Burt Smithart.

"Taking somebody's ballot out of a mailbox is a no-no," Whigham said.

Martin was a supporter of Bullock County Commissioner Alfonsa Ellis, who faced challenger Terry Jackson in the June Democratic primary and runoff, and defeated him with the help of absentee votes.

Whigham said that during the runoff campaign, Martin removed Calloway's ballot from Calloway's mailbox, then returned it to her when Calloway confronted her. Before the grand jury, one of Calloway's neighbors testified that she saw the ballot being removed from the mailbox. A friend of Calloway's testified that she went with her to get the ballot back from Martin.

Calloway later cast the ballot in the runoff election.

Bullock County is in the eastern Black Belt, and nearly 28 percent of the votes cast in its June 4, 2002, primary elections were absentee. That percentage was the highest in the state.

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## *ELECTION*Notes

*San Bernardino County, California recruiting Assistant Registrar of Voters.* San Bernardino County, Cal. is seeking an Assistant Registrar of Voters to assist with the planning, organizing, implementing, evaluating, and directing the department's election activities. Required: bachelor's degree in business or public administration or a closely related field; three years of management experience, including one year in election work. County application required. An oral examination covering management and problem and issue resolution may be required. Recruitment is open until a sufficient number of qualified applicants have applied. Salary range: \$64,730 to \$82,805. For further information (909) 387-8304, or by e-mail at [employment@hr.sbcounty.gov](mailto:employment@hr.sbcounty.gov).

NV

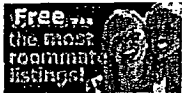
*Nevada legislative candidate indicted for absentee vote fraud.* An unsuccessful primary election candidate for the Nevada state legislature was indicted this month on charges related to absentee vote fraud in the November, 2002 general election. According to press reports, the indictment charges Gary Lee Horrocks, a tavern owner, with 28 counts of felony voter fraud, 31 counts of forgery, two counts of misdemeanor conspiracy, and one count of burglary. The burglary charge is based on entering a county office with the intent to commit a felony -- deliver fraudulent absentee ballots. Horrocks wife Pam, who allegedly completed absentee ballots and delivered them, was named as an unindicted co-conspirator. Horrocks was one of several candidates in the Republican primary in the 37th Assembly district. The winner of that primary, Francis Allen, lost in November to Democrat Marcus Conklin by a margin of 134 votes.

*New Jersey Election Officials get tips on activities for student poll workers.* New Jersey election officials attending the 66th annual meeting of the Election Officials Association in Atlantic City recently got ten ideas on how to use student poll workers. The suggestions: set up and break down machinery; give demo on a dummy machine; show demo chart to those in line; help senior citizens move around; bilingual students as interpreters; smile and wear an "ask me" sign; instruct voters on how to get to their correct polling place; thank people after they have voted; before election day visit senior centers and give a demonstration; and, *get the donuts*. The suggestions were offered in material distributed by Freedom's Answer, a non-profit group designed to engage young people in the political process. Doug Bailey, co-founder of Freedom's Answer, spoke at the conference.

*FEC continues disclosure exemption for Socialist Workers Party.* The Federal Election Commission (FEC) last month voted to continue to exempt the Socialist Workers Party from disclosing campaign finance information through December 31, 2008. The Socialist Workers Party was granted an exemption from disclosure provisions of the campaign finance law by a federal court in 1979. The court later extended the exemptions to 1988. The FEC has granted the exemption since that time. The FEC based its decision on evidence suggesting a reasonable probability that contributors and vendors doing business with the party could face threats, harassment, or reprisals if their names and information about them was disclosed. The FEC renewed a provision that requires SWP committees to assign a code number to each individual contributor from whom it receives contributions in excess of \$200 during a calendar year. This allows the FEC to determine whether that contributor has exceeded the contribution limits of federal law.

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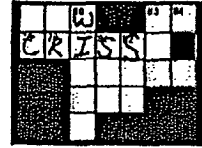
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Merlino, Beckett welcome FBI voter probe

By DOUG McMURDO and RICH THURLOW October 23, 2002



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County clerk believes investigation could last well beyond Nov. 5 general election

Eight FBI special agents armed with a subpoena rolled into Tonopah early Monday morning and confiscated roughly 60 banker boxes containing thousands of records regarding the 2000 general election and the Sept. 3 primary election. That was viewed as good news by District Attorney Bob Beckett and County Clerk Sam Merlino.

Special Agent Daron Borst had virtually nothing to say regarding what occurred at Tonopah, or why.

"I can't say anything on this due to Dept. of Justice guidelines and other federal laws," Borst said Monday afternoon. "I cannot provide any details on this investigation. Dept. of Justice guidelines are the ones I have to go by."

Borst said he could not comment on the number of agents reported to have gone to Tonopah or why that many might be required. He did offer that the FBI prefers to send as many agents as possible on an investigation in order to conduct it quickly.

Borst said the type of investigation being conducted would not allow for information to be released to the public prior to the conclusion of it, and, "I have no idea when that's going to be."

Nor would Borst say what the FBI was looking for. "It's forbidden for me to talk about that," he said.

Nye County Clerk Sam Merlino said the agents were equally tightlipped with her, though one of them told her the investigation "specifically" addressed allegations of voter fraud. The agents, she said, were precluded from informing Merlino who it was that contacted them.

Sources said Deputy Attorney General and Nye County District Attorney candidate Brian Kunzi contacted the FBI after he was presented with allegations of voter fraud. Kunzi was not available for comment by press time. At any rate, Kunzi reportedly told several people he was compelled to contact the FBI after he received the complaints due to his status as a state prosecutor.

"They took all records from the 2000 general and the 2002 primary elections," Merlino said. "I believe they want to sift

029562

primary election, Merlino said. "Somebody they want to see through them to be sure the people who have requested absentee ballots actually exist."

Merlino said the agents arrived unannounced in four white sedans and left the county seat late Monday morning and headed back to the bureau's Las Vegas field office. The records seized included voter ballots, absentee ballots, poll books and registers, said Merlino, who was followed by all eight agents when she had to drive to the old Tonopah courthouse to retrieve records from the 2000 election that are kept in a vault.

"They were polite to us," she said. "They were all wearing black suits and driving white cars and they would not let me out of their sight. It was kind of intimidating, but there was no problem whatsoever."

While FBI officials are prohibited from talking about the investigation, Merlino indicated the inquest might not conclude anytime soon. "They said they would be back right after the (Nov. 5) general election to take those records," she said.

Merlino welcomes the FBI's involvement. "If this cleans it up and we're squeaky clean, that would be good. If they find something we'll deal with it as we're supposed to. If they don't find anything, that would be wonderful."

District Attorney Bob Beckett was also thankful the FBI has become involved. "We'll run our investigation parallel to theirs," said Beckett. "The federal government has many more resources than we do, and hopefully we'll be able to take advantage of those resources."

In the meantime, Beckett said his office has begun its investigation into allegations that Chuck Bondi and others committed perjury or entered into a conspiracy to commit perjury when they filed over 1,200 voter challenges earlier this month. Nearly 200 of those challenges were duplicates or triplicates of the same challenge.

At issue is the manner in which the challenge was mounted. The group, most who are members of Concerned Citizens for Fair Elections, signed their names to each of the written notices, swearing under penalty of perjury they physically inspected each residence they said was abandoned or otherwise not occupied by a registered voter.

More than 220 of the challenges were improper, and several of the signers testified in court last week they did not actually inspect the suspect voter residence.

Of decidedly more importance is the issue of the more than 850 voter registrations that were cancelled due to listing a PO box as the voter's physical address. Such listings are illegal in Nevada and last week Fifth District Judge Robert Lane ordered them expunged from the rolls until and if the voter corrects the defect in his or her registration.

While the figures continue to be studied, a preliminary count conducted by the district attorney's office concluded 232 of the 1,045 voters challenged (minus the 198 duplicates) participated in the Sept. 3 primary. Of those, 141 who voted were subsequently cancelled last week. Those 141 will be

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10/24/2002 12:23 PM

precluded from voting Nov. 5 if they fail to correct any defects listed on their voter registration. The method under which they voted, whether via absentee, early or on election day, has not been determined though those numbers would likely be crunched later this week.

Illegal registrations can be remedied in writing or by providing proof the voter has a physical address in Nye County when they go to the polls.

By 8 a.m. Tuesday, the second day of early voting, election board Chairwoman Kay Floyd said five voters who had been impacted had taken advantage of the opportunity to properly register.

In a Las Vegas Review-Journal article on the subject in Tuesday's edition, the writer quoted unnamed sources as saying they were upset with the results of the Sept. 3 primary. Specifically mentioned was the fact incumbent Sheriff Wade Lieseke was losing badly to challenger Tony DeMeo until absentee ballots were counted and those totals "swayed the race (Lieseke's) way."

Lieseke prevailed over challenger Doug Richards in a similar fashion in 1998. Not mentioned is the fact that Lieseke also pulled majority numbers in early voting in both races as well. DeMeo garnered 2,313 votes to Lieseke's 2,184 in the primary. During early voting held in late August, Lieseke received 779 votes to DeMeo's 565 and Lieseke earned nearly one hundred more votes in absentee voting, 223 to 128 cast for DeMeo.

On FOX 5 News on Tuesday morning, a newscaster said "dead" people were voting in Nye County. She did not mention the source of that information.

There is no evidence to support the allegation, said Merlino, adding, "This is getting out of hand."

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## Reader Opinions

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NY

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### DA says jury out on probe of voting

Albany-- Clyne awaiting final tally before deciding whether to launch investigation of allegations

By CATHY WOODRUFF, Staff writer  
First published: Wednesday, March 10, 2004

Albany County District Attorney Paul Clyne is weighing whether to investigate alleged voting irregularities in last week's special primaries for the County Legislature but won't decide until all the ballots are counted.

"At this point, I don't have a specific complaint," Clyne said. "So, I'm going to wait until the dust settles at the Board of Elections," Clyne said.

County elections officials are scheduled to begin counting hundreds of controversial absentee ballots today.

Concerns about the handling of absentee ballots in some legislative districts emerged a few days before the March 2 voting when it was revealed that Third Ward Democratic Leader Jamie Gilkey had filled in more than 140 signed absentee ballot applications with instructions that the ballots be released to him.

In one case, Gilkey acknowledged crossing out the mailing address written in by one voter and replacing it with his own. He said he was worried about proper delivery and handling of the ballots by the elections board staff.

More concerns were raised on primary day, when elections officials found that at least 40 voters had been assigned to the wrong legislative district and polling place. As a result, as many as 10 people apparently cast votes in the wrong legislative contest.

The state Board of Elections has begun investigating one complaint related to Albany's Democratic primaries, said a spokesman for the board, who declined to reveal the specific allegations or the person who submitted the complaint.

Albany County Legislator Wanda Willingham is the Democratic incumbent for District 3 in Albany's Arbor Hill, where many of the alleged irregularities occurred. She is locked in a close race with challenger Jestin Williams, who has Gilkey's support.

Willingham said she expects to submit complaints to both Clyne and the state Board of Elections regarding the primary, but she will wait for more counting to be done.

"We're just working on making sure we file the right papers and make the complaint as complete as possible," she said.

Albany County's election commissioners and their staff began canvassing machines used in last week's voting, which also included a Democratic presidential primary, on Monday.

Willingham and two other candidates -- Ward DeWitt in District 4 and Lucille McKnight in District 2 -- secured a court order Friday impounding all the voting machines and paper ballots used by voters in

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their districts.

Willingham was slightly ahead of Williams in the first machine tally, while McKnight, an incumbent, trailed challenger Marilyn Hammond. In District 4, incumbent Virginia Maffia-Tobler is ahead of challenger DeWitt.

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029566



N4

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### Ballot count may end, but not fight

Albany-- Possible losers in county primaries vow to stay in general election

By MICHELE MORGAN BOLTON, Staff reports  
First published: Friday, March 12, 2004

Incumbent Wanda Willingham was 15 votes ahead of challenger Jestin Williams Thursday as elections officials pored over absentee ballots from the County Legislature's controversial primary.

But the final tally is still unclear in the District 3 race, where ballots have been plagued by missing signatures, bad addresses and what some consider a questionable effort by Third Ward leader Jamie Gilkey to have 140 of them set aside for personal distribution.

Albany County Board of Elections commissioners Michael Monescalchi and John Graziano Sr. will examine an additional 117 contested District 3 ballots at 3 p.m. today

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After they rule on whether the ballots should be opened, a state Supreme Court judge will decide on those that remain in dispute.

Willingham said the number of irregularities could be an indicator that "something went on."

"That remains to be seen in the end," she said. "Will it cost me the primary? It's quite possible, but not the general election."

She was temporarily ahead at 228 votes to Williams' 213 votes.

Paul DerOhannesian, who represents Willingham, said some District 3 residents received ballots with the wrong candidates listed.

Other ballots were sent to people who had never registered to vote. And on and on, he said.

"Every voter in this district should be concerned," he said, indicating that Gilkey seemed to be involved in many of the irregularities.

"What we have here is an effort to keep people from being able to vote because they think they'll lose the election," Gilkey replied, denying any wrongdoing.

"I'm not judge and jury," Williams added. "But now is the time to protect the senior citizens' right to vote."

Williams' attorney, Joshua Ehrlich, called the objections an effort to exclude elderly and disabled people.

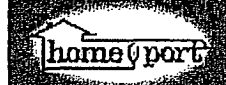
On Wednesday, it appeared that Marilyn Hammond had defeated incumbent Lucille McKnight in the Democratic primary for a South End seat, but McKnight vowed to keep running on another ballot line.

With 20 absentee ballots for District 2 still sealed due to objections by McKnight, Hammond is ahead

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by 29 votes, 243 to 214.

District 4 ballots, which were discussed late Thursday, involved incumbent Virginia Maffia-Tobler and challenger Ward DeWitt.

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### Ballot dispute heads into court

Albany-- Justice to hear testimony on disputed Democratic primaries

By CATHY WOODRUFF, Staff writer  
First published: Wednesday, March 17, 2004

A hearing on scores of disputed absentee ballots that could expose operations at the Albany County Board of Elections to intense public scrutiny is scheduled to begin this morning before state Supreme Court Justice Joseph Teresi.

Teresi is being asked to decide whether some 162 absentee ballots cast in three Albany Democratic primaries for County Legislature should be opened and counted -- or whether their distribution and completion was so flawed that they should be thrown out.

Democratic Elections Commissioner Michael Monescalchi and voters who have complained about the handling of their ballots are among the witnesses expected to testify.

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Allegations of irregularities abound concerning absentee ballots issued for the March 2 primary. Most of the objections center on ballot applications and ballots distributed by 3rd Ward Democratic Leader Jamie Gilkey and two associates.



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One complaint already made public is from a voter whose ballot application was altered by Gilkey, who replaced her mailing address with instructions that her ballot be given to him. After receiving a complaint from the woman, the board issued a new ballot for her.

In another case, a voter whose ballot was released to Gilkey said a man brought both an application and a ballot to his home at the same time. The board is supposed to issue a ballot only after receiving a valid application.

In his complaint, the voter also said the man tried to leave with his signed ballot envelope without allowing him to vote.

Allegations concerning the ballots Teresi now is being asked to decide include:

Reasons listed for needing the ballots were insufficient and weren't properly scrutinized by the board. Among the reasons given were: "senior citizen, not mobile," and "single mother with child."

There are no applications on file for some ballots returned.

Signatures on ballot envelopes or applications don't match others on file with the board.

Ballot envelopes with signatures of people who say they did not vote.

A proposed settlement that could have averted a hearing and called a new election in District 3 between incumbent Wanda Willingham and Jestin Williams fell apart Tuesday, according to sources close to the candidates and their attorneys.



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Williams wants the 115 unopened ballots counted. The current vote totals show Willingham leading by 15 votes over Williams, 228-213.

Joshua Ehrlich, the attorney for Williams and leading candidates Marilyn Hammond in District 2 and Virginia Maffia-Tobler in District 4, said he will ask the judge today to accept the results as they stand in Districts 2 and 4 without the disputed absentees.

There are not enough uncounted ballots in those districts to change the results.

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### Jurist hears of ballot handoff

Albany— Democratic ward leader, candidate testify about absentee voting arrangements

By CATHY WOODRUFF, Staff writer

First published: Thursday, March 18, 2004

Third Ward Democratic Leader Jamie Gilkey testified Wednesday that he was the point man for a network of campaign workers who channeled absentee voting applications and ballots for the March 2 Albany County Legislature primary through him to the Board of Elections.

Gilkey said his responsibilities included filling in reasons why voters could not get to the polls and writing instructions that the ballots be released to him by the elections board staff.

He was unable to say, however, whether the voters knew in all cases that he was completing their applications or that their ballots had been designated for pickup by him.

"They were told that, if they were all right with it, we could get the ballots for them," Gilkey said. The option for voters to have the ballots mailed to them "did come up sometimes, but it was not a part of the usual conversation," he added.

Gilkey and Jestin Williams, who is challenging incumbent District 3 Legislator Wanda Willingham, outlined the system during testimony before state Supreme Court Justice Joseph Teresi. The judge is being asked to determine whether some 162 disputed absentee ballots in three Democratic primaries for the Albany County Legislature should be counted.

Testimony is expected to continue today, with lawyers saying it may be necessary for proceedings to move to the homes of some disabled absentee voters to obtain their testimony.

In his testimony Wednesday, Gilkey said that when he did not collect applications personally he relied on oral reports from those who visited the voters and on notes placed on the forms to determine the reasons why absentee ballots were needed.

Williams said he and supporters, including Common Council Member Michael Brown and Gilkey, agreed on the absentee ballot process during a campaign meeting. He and Gilkey have described the strategy as an effort to counteract what they allege were forgeries of ballots in a race against Willingham just over four years ago.

"Mr. Gilkey wanted the ballots to come back to him, because we were talking about trying to protect people's rights to the absentee ballot box," Williams testified. "The absentees I received, I trusted Mr. Gilkey and his honesty. We agreed that the ward leader would be responsible."

Wednesday's testimony was the latest twist in a hotly contested special election ordered by federal courts earlier this year to correct district lines that shortchanged minority voters.

The District 3 race, where Willingham now leads Williams by 15 votes -- with 115 disputed absentee ballots still unopened -- is the closest and most fiercely fought race. But testimony Wednesday pointing to widespread voting irregularities also could also call into question the integrity of balloting in

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Districts 2 and 4.

Albany County Democratic Elections Commissioner Michael Monescalchi testified the board has no formal policies for evaluating applications and determining whether ballots should be issued.

"Any employee working in the front office is authorized to review an application for an absentee ballot and issue a ballot if they believe it complies with New York State Election Law," he said.

When asked by attorney Paul DerOhannesian whether he considered some reasons given on applications to be legally sufficient, he said: "The staff made a decision to issue the ballot and I stand by it."

Also on Wednesday, voters Bernard Bryan and Lasone Garland-Bryan testified that they learned after voting that they had been directed to the wrong polling place and voted in the wrong primary.

A poll watcher for the Willingham campaign testified that one machine at School 20 was improperly set up, listing candidates from two different districts.

Second Street resident Ashley Perez testified he was persuaded to vote by absentee for the sake of convenience by a group of visitors that included Williams and said he later regretted the decision.

He also said the reason listed on his application for needing a ballot -- "working during the hours the polls are open" -- was not written by him and is inaccurate. "I am unemployed," he said.

Perez said the application, ballot envelope and ballot all were produced during the same visit. That account raises another issue for Teresi to consider because the Board of Elections is not supposed to issue absentee ballots without an approved application.

Williams later testified that he has never met Perez and did not visit his apartment.

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NY

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### Court hits road in voting dispute

Albany-- Justice Teresi to visit homebound residents for testimony on contested absentee ballots

By CATHY WOODRUFF, Staff writer  
First published: Friday, March 19, 2004

State Supreme Court Justice Joseph Teresi is scheduled to bring his court to the kitchens and living rooms of homebound voters today hear their testimony about how and why they cast absentee ballots in the March 2 Democratic primary for Albany County Legislature.

Stops are planned for this afternoon at one home in Albany's South End and three in Arbor Hill to help Teresi determine whether some 162 absentee ballots cast in three Albany Democratic primaries for County Legislature should be opened and counted.

Three candidates -- incumbents Wanda Willingham and Lucille McKnight and Ward DeWitt -- are contesting the ballots, many of which were distributed by Third Ward Democratic leader Jamie Gilkey and associates including city Common Council President Pro Tempore Michael Brown.

Gilkey has acknowledged filling in much of the information written on scores of ballot applications after they were signed by the voters, including instructions that the ballots be released to him.

Candidate Jestin Williams, a political ally of Gilkey who trails Willingham in District 3 by 15 votes, is adamant that the 115 unopened ballots in that district should be opened and counted.

Several voters called to testify on Thursday were unclear about how their ballot applications were filled out after they signed them and other details about their ballots. And in his own testimony, Gilkey acknowledged that, in several instances, he did not have authorization from the voters to pick up their ballots.

He described the absentee voter application drive that he and others with the Williams campaign conceived as the most ambitious effort he's been involved in in several years as a ward leader.


He said the idea was to counteract potential delays at the county Board of Elections and to prevent ballots traditionally entrusted to 12th Ward Leader Joe Jennings, the brother of Mayor Jerry Jennings, from being "flipped" by an opposing campaign.

Phillip Moore, proprietor of the Silver Slipper tavern on Henry Johnson Boulevard, testified that he signed an absentee ballot application after he was approached by Brown, the council leader, because he's busy and he had a dental appointment on March 2.

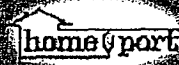
Despite instructions on his application that the ballot be released to Gilkey, Moore said he never asked for that.

Another voter testified that she recalled signing an application brought to her by Williams and recognized her signature on an absentee ballot envelope, but does not remember marking a ballot.

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Another voter said he and his relatives all filled out absentee applications when Gilkey and Brown came to their house, but it was unclear whether the reasons written on the forms for needing absentees were sufficient to meet legal standards.

While the absentee plan was formulated by the Williams campaign team in District 3, Gilkey said the strategy also was used to a lesser degree in District 2, where Marilyn Hammond is running against incumbent legislator Lucille McKnight. Gilkey is the campaign manager for both Williams and Hammond.

He said he expressed doubts about the board's ability to deal with absentee ballots when he visited Deborah Williams-Muhammad, a longtime absentee voter who already had a permanent application on file with the Board of Elections.

"We knew she was on the (permanent absentee) list, and we wanted to see if we could expedite getting that ballot to her," he testified. "We said we did not know how things were going to work with the special election, so she might want to fill out another application to make sure she would get her ballot."

Gilkey acknowledged that he crossed out Williams-Muhammad's mailing instructions without her permission and, instead, wrote his own name and address because "we were not certain how the Board of Elections was going to handle people whose absentee ballots were normally mailed."

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NY

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### Vote to end ballot crisis

Albany -- Judge orders new District 3 primary after election dispute

By CATHY WOODRUFF, Staff writer  
First published: Saturday, March 20, 2004

It will take a special election to settle a dispute over a special election for the Albany County Legislature.

Two candidates who vied in a March 2 special Democratic primary in District 3, which covers parts of Arbor Hill, downtown and North Albany, will face off again on April 8.

Under the settlement reached Friday by the candidates in three Democratic primaries, in which scores of contested absentee ballots remain unopened, the current leaders in two other legislative districts will be certified as winners without counting the absentee ballots.

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The agreement came as state Supreme Court Justice Joseph Teresi was about to hear a third day of testimony that would have taken him to the residences of four homebound voters. They were to testify about their absentee ballot experiences in the weeks leading up to the March 2 special primary.

The deal also came after hours of testimony embarrassing to the city Democratic organization. The testimony linked city party leaders, including Common Council President Pro Tempore Michael Brown, to a campaign that diverted almost 150 signed absentee ballot applications to 3rd Ward Leader Jamie Gilkey. He would then complete and submit them to the Board of Elections.

Under the agreement outlined by attorneys for the candidates and approved by Teresi, there will be a new District 3 primary between incumbent Wanda Willingham and challenger Jestin Williams. Willingham led Williams 228-213 and had challenged about 115 absentee ballots collected by Gilkey and others involved in Williams' campaign.

The primary will be run with enhanced security, including sheriff's deputies at each of nine polling places, and strict limits on the use of absentee ballots.

The settlement lets stand the results in District 2, where challenger Marilyn Hammond defeated incumbent Lucille McKnight, 244-215, and in District 4, where incumbent Virginia Maffia-Tobler won over Ward DeWitt, 218-168.

McKnight and DeWitt had challenged several absentee ballots, but there were not enough unopened ballots in either election to change the results.

But the candidates in Districts 2 and 4 will meet again in a special election on April 27 for all 39 seats in the County Legislature. McKnight is running on the Working Families Party line, and DeWitt has the Republican line.

Williams and Willingham both said they were satisfied with Friday's settlement, even though it will put them through yet another compressed primary campaign and election.



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Willingham said it was worth letting go of her potentially winning lead in the March 2 primary count to reveal such a systematic abuse of absentee ballots.

"The exposure of the absentee ballot process was critical for my community," she said. "That was an age-old process. Never again."

Williams, who had been adamant that he wanted the challenged absentee ballots counted, said he's reassured by the agreement to have a police presence at all the polling places and limits on the number of poll watchers to help keep order. Tensions between the two campaigns boiled over at one polling place during voting March 2.

"I think it's for the common good of the community," he said of the settlement.

Attorneys Joshua Ehrlich -- who represented Williams, Maffia-Tobler and Hammond -- and Paul DerOhannesian -- who represented Willingham, DeWitt and McKnight -- spent much of Friday morning in settlement talks.

The settlement is the latest chapter in the hotly contested special election in new districts created after the 2000 census. Last November's election was postponed amid a court battle over the original district lines drawn by the Albany County Legislature, which shortchanged minority voters. Federal judges ordered the special March primary and special election next month based on a new map.

DerOhannesian, who also represents two civil rights groups that sued the county in the redistricting case, called the revelations in the absentee balloting dispute "further proof of what was proven in federal court. This county has a history of violating minority rights and the rights of all voters."

He described the March 2 primary as "contaminated, corrupted and compromised," undermining the gains in minority voting strength that the redistricting was intended to achieve.

It is unclear whether Gilkey and others involved in the absentee ballot irregularities will face criminal charges as a result of their actions. District Attorney Paul Clyne, who previously said he would wait for the issues to be cleared at the Board of Elections, was unavailable for comment.

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Pittsburgh Post-Gazette (Pennsylvania)

September 25, 2004 Saturday SOONER EDITION

**SECTION:** LIFESTYLE, Pg.A-9**LENGTH:** 755 words**HEADLINE:** FAX-THE-VOTE PLAN BRINGS MANY UNHAPPY RETURNS**BODY:**

Somewhere en route to becoming the villain of the week, Pat Williams put out a bid to collect and transmit the votes of Americans overseas — primarily members of the military, but also citizens living abroad in places the mails don't always reach. Think of Antarctica, Afghanistan and the sands of Iraq.

The idea was simple enough: military and other overseas voters from Missouri and North Dakota could send their requests for absentee ballots either by e-mail, or more likely fax, to Williams' Omega Technologies, in Alexandria, Va. Omega would, in turn, fax those requests to elections offices in those two states, with which it has contracts.

The elections offices would ship the ballots to the voters, who would fill them out and scan them into an e-mail or a paperless fax that would go to Omega's computers. Omega would check the cover sheet and route the ballots in the form of faxes to the elections offices and, it is to be hoped, democracy would be served.

In the spring, Missouri received 22 ballots in this fashion. The rest came by regular mail.

Since that time, Williams has been painted as a Republican operative and a general threat to the republic. She has been accused of subverting the secret ballot and opening the door to election theft on the scale of a Ferdinand Marcos.

"I'm a citizen as well," Williams protested. "I'm a veteran as well." These claims are, of course, a thin defense in an age when veterans put up TV ads attacking one another's service in combat. But Williams, whose own e-mail account recently filled up with hate mail, would like the world to know that she has no plans to steal the election.

Her problems began when the suspicious noticed that Williams had donated more than \$6,000 to the Republican Congressional Campaign Committee — not a terribly impolitic move for a business that bids on government contracts in a town run by Tom DeLay. Initial accounts overlooked the fact that she had also worked as a volunteer and donor in the presidential campaign of Democrat Wesley Clark.

A graduate of Tuskegee Institute, Williams joined the Army straight out of school, worked her way up the ranks into an Army think tank, then retired in 1996 after arthritis overtook her.

"I resent it to my soul when people say I would commit a felony to manipulate the vote," she said.

Such alarms went off because the service members who send their ballots this way must sign a form waiving their rights to a secret ballot, because a faxed ballot is signed to prevent fraud, and someone has to check that signature. The most likely viewer will be the person at the end of the fax machine in Missouri, said Terri Duidaller, a spokeswoman for the elections department there.

She also notes that Article 8, Section 3 of the Missouri Constitution requires that elections workers be sworn not to disclose how any voter voted.

The outcry against Williams also ignores the fact that under the current system, all 50 states will take faxed ballots that also must be signed and witnessed. It just happens that two — Missouri and North Dakota — work directly with Omega to process the ballot requests.

"It is always suggested first and foremost — mail your ballot. The government has never said, 'We want you to send your ballot through this program,'" Williams said.

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## FAX-THE-VOTE PLAN BRINGS MANY UNHAPPY RETURNS Pittsburgh Post-Gazette (P

Of the 22 service members who sent their ballots through the Williams program this spring, Williams saw none of them.

"The process is completely electronic. I don't get any hard copy. It is computer-to-computer, talking, receiving the information," Williams said.

Elections can, of course, be stolen. Legend has it that many years ago, in Westmoreland County, some ballot boxes had false bottoms and unfriendly votes simply fell into a basement room for immediate replacement. In other places, boards have been known to simply issue a fraudulent count. Doubtless some unease over the spectacle in Florida four years ago, where the head of the Bush campaign was also the person who conveniently certified the disputed Palm Beach count, has a few folks nervous.

Then again, technology is often scary to people who easily forget that the same outlet that can electrocute someone can also provide current to a heart-lung machine. It's a matter of how we use it. That's what Pat Williams was thinking.

"It was simple. It was secure. It was practical," she said.

It was also new, and that's why her e-mail is filling up with stuff she'd rather not count just now.

**NOTES:**

Dennis Roddy can be reached at droddy@post-gazette.com or 412-263-1965.

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


# PITTSBURGH TRIBUNE-REVIEW

PA

## Ruling ends vote practice

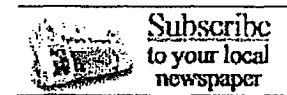
By Glenn May  
TRIBUNE-REVIEW  
Wednesday, March 10, 2004

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Able-bodied voters casting absentee ballots either must hand-deliver or mail the ballots themselves, the state Supreme Court has ruled.

The decision Monday ends a longtime Allegheny County practice of allowing third parties to gather and deliver the ballots to elections officers.



Disabled or handicapped voters still can have third parties deliver their ballots.

The ruling doesn't change the outcome of the Nov. 4 whisker-thin loss by Westmoreland County Common Pleas Judge John Driscoll for state Superior Court. In fact, the decision took votes away from Driscoll, a Democrat.

The state's highest court invalidated 56 absentee ballot votes cast in Allegheny County in the Nov. 4 election. The 6-0 decision issued Monday unlikely will reverse the outcome of any other races here, officials said.

Several Democrats said the Supreme Court's decision could erect hurdles to voting. Republican officials said the 6-0 ruling closes a potential avenue for election fraud.

"It's a break with tradition that will have effects far beyond this decision," said Lawrence Tabas, the lawyer for state Superior Court Judge Susan P. Gantman, who defeated Driscoll in November. Gantman, a Republican, is a party in the case.

Supreme Court Justice Ronald D. Castille wrote in the court's decision that state election law clearly requires absentee voters to either hand-deliver their own ballots or to mail them to elections officials.

"Our precedent is clear," Castille wrote. "We cannot simply ignore substantive provisions of the elections code."

Allegheny County Elections Director Mark Wolosik did not return telephone calls for comment yesterday.

The dispute stems from an Oct. 27 decision by the Allegheny County Board of Elections to continue to allow third parties to deliver absentee ballots for the Nov. 4 general election.

Before the election, John Pierce and Thomas Stepnick -- last fall's GOP candidates for county treasurer and register of wills -- asked the U.S. District Court in Pittsburgh to halt the practice. U.S. District Judge Joy Flowers Conti determined that the issue should be decided in a state court.

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Allegheny County elections officials eventually determined that 56 absentee ballots in the November election had been delivered by third parties.

Pierce and Stepnick filed a lawsuit after the election, asking the Allegheny County Court of Common Pleas to review the validity of the absentee ballot-delivery system. Gantman later joined in the lawsuit.

Allegheny County Judge Joseph James upheld the practice, and Pennsylvania Commonwealth Court affirmed his decision. Pierce, Stepnick and Gantman appealed to the state's top court.

Although the Allegheny County Elections Board might have wanted to encourage more people to vote by allowing third-party deliveries, Castille wrote, the practice is "more likely to invite, rather to remedy, fraud."

Clifford Levine, lawyer for the Democratic State Committee, said no allegations of fraud ever were made over the 56 ballots.

He said the third-party delivery system in Allegheny County had made it easier for people to vote.

"We think it's best for democracy when eligible voters are allowed to vote," Levine said.

Richard Stampahar, chairman of the Republican Committee of Allegheny County, said it used to be common to see Democrat activists carrying bundles of ballots for delivery at election time. He said the practice encouraged fraud.

Stampahar said the Supreme Court decision means Allegheny County will end a tradition long since abandoned in other counties in the state.

Tom Flaherty, chairman of the Allegheny County Democratic Committee, said third-party delivery has been used since before he became politically active more than 25 years ago. He said the deliveries were handled by self-motivated activists and were not party strategy.

Flaherty said it is hard to understand why a voter can mail a ballot but isn't allowed to have someone else deliver it. Still, he said, the local party will abide by the ruling.

Ken Snyder, spokesman for Democratic State Committee Chairman T.J. Rooney, and Dan Hayward, executive director of the Republican State Committee, both said their parties mail absentee ballots to voters, but voters are told to mail or deliver them personally to county elections offices.

Flaherty said the number of ballots delivered by third parties is usually too small to change the outcomes of races.

Gantman defeated Driscoll by 28 votes for the state Superior Court seat.

Tabas said most of the 56 challenged ballots favored Driscoll. Since the Supreme Court invalidated the 56 ballots, Gantman's 1,125,543 to 1,125,515 margin of victory will grow slightly.

Pierce lost by about 65,000 votes; Stepnick lost his race by more than 75,000 votes.

An author on a book about Pennsylvania election law, Tabas said the ruling is another step toward ensuring election practices do not differ from county to county.

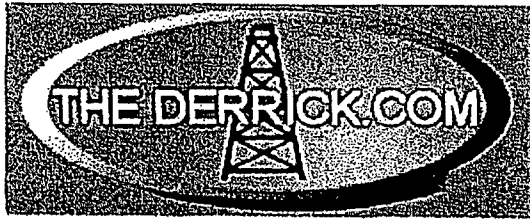
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"A court sitting in Westmoreland County may not interpret a statute differently than a court in Dauphin County," he said.

The decision voids the absentee ballots of some prominent Allegheny County residents, including U.S. Attorney Mary Beth Buchanan; U.S. Rep. Melissa Hart, R-Bradford Woods; and Elsie Hillman, a prominent GOP power broker.

*Glenn May can be reached at [gmay@tribweb.com](mailto:gmay@tribweb.com) or (412) 320-7844.*

029593



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# The Derrick & NewsHerald

029584

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## Judge to hear arguments in election case

PA

**Top Stories**

A HEARING IS SCHEDULED MONDAY REGARDING THE CLARION COUNTY DISTRICT JUSTICE CONTEST BETWEEN NANCY KADUNCE AND DUANE QUINN.

**Sports**

**News-Herald**

CLARION - A visiting judge will hear arguments Monday concerning legal challenges in the election involving a Clarion County district justice position.

**Clarion-News**

**Good Times**

Judge Carson Brown has been appointed to preside over a 9 a.m. hearing scheduled in response to motions filed by Nancy Kadunce and Duane Quinn.

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Quinn, the Republican candidate who currently holds the office, was declared the winner by eight votes over Democratic opponent Nancy Kadunce in the Nov. 4 general election.

**Contact Information**

Kadunce has requested a recount of all ballot boxes in the district as well as the disqualification of more than 100 absentee ballots.

She claims in court papers there is a substantial risk of absentee ballot fraud due to the election board's practice of allowing third-party delivery of the ballots.

Quinn has filed documents asking the judge to dismiss Kadunce's

requests.

The election board's certified results showed Quinn with 1,508 votes to Kadunce's 1,500.

Clarion County Judge James Arner and Senior Judge Charles R. Alexander had recused themselves from the matter.

Quinn, of Fisher, has served as district justice since his appointment in 2001. The post serves Sligo Borough and Farmington, Highland, Knox, Millcreek, Monroe, Paint, Piney and Washington townships.

Kadunce, a resident of Highland Township, served as judicial administrative assistant for the district justice office from 1976 until her resignation earlier this year in order to run for the post.

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SD

## Vote drive worker charged in forgery

By DAVID KRANZ  
Argus Leader

published: 10/19/2002

A Rapid City man working for a Native American voter registration drive has been charged with five counts of forgery related to documents submitted under the program.

Lyle Nichols, 45, was arrested Friday and probably will be arraigned Monday, said De Glasgow, chief deputy sheriff for Pennington County.

This is the first arrest arising from recent allegations of voter fraud in and around Native American reservations in South Dakota. Auditors in several West River counties have reported suspicious cases in which documents were submitted in the names of people who were deceased or too young to vote.

Most of the suspected misdeeds focus on a Flandreau woman who formerly worked as an independent contractor for a registration program backed by the Democratic Party.

The Native American Voter Education and Registration Project paid Nichols \$3 for each completed registration. He allegedly forged some names, Glasgow said.

Officials said Nichols turned in 226 registration cards, most of which were fraudulent.

Workers at the Pennington County Auditor's office called the sheriff's department after noticing discrepancies in several forms. In one case, they received a voter registration form for a man who had already registered. But the signature and other information on the new form did not match the old one.

"It looks like what he was doing was pulling names out of the phone book or newspaper," said Pennington County Sheriff Don Holloway. "There were at least two people that were deceased."

Nichols also had worked briefly for the state Democratic Party as an independent contractor, according to its spokeswoman, Sarah Feinberg.

"I am told he worked four hours with the South Dakota Democratic Party in September," she said. "He passed out literature and registered four new voters. We paid him \$46. Those registrations are not the ones that are in question."

Two of the registrations Nichols submitted to the Democrats were duplicates that were not sent to the auditor or turned over to authorities.

"We found it in our system that they were already registered. It is not uncommon to have someone think they are not registered and then register again," Feinberg said.

Nichols' brother also was questioned in connection with the situation, but there was no indication of wrongdoing, officials said.

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The South Dakota Republican Party issued a statement late Friday applauding the charges in Pennington County.

The statement, which was not attributed to an individual Republican official, said voter fraud needs to be investigated thoroughly in the state.

"Those found responsible should be prosecuted to the fullest extent of the law," the statement said.

The attorney general's office is working in conjunction with federal law enforcement officials to determine the extent of the problem.

The Flandreau woman, Becky Red Earth-Villeda, also known by her Dakota name, Maka Duta, is suspected of falsifying voter-registration and absentee-ballot documents. She has denied any wrongdoing.

Attorney General Mark Barnett has said Democratic Party officials have cooperated with the investigation into Red Earth-Villeda's case. The party terminated its relationship with Red Earth-Villeda and is not implicated in the case.

The Native American Voter Education and Registration Project is an effort by the United Sioux Tribes. It began in late August with the help of a \$200,000 grant from the Bauman Foundation in Washington, D.C.

Clarence Skye, executive director of United Sioux Tribes, estimates there are 28,000 Native Americans of voting age in South Dakota.

Twenty-one people are part of the effort, canvassing both reservations and off-reservation communities, Skye said. He said workers have registered 5,166 new voters in Rapid City alone, where the last census showed 15,000 Indians.

The Native American Voter Education and Registration Project also is encouraging county officials to provide more polling places on reservations, Skye said. Many Indians do not vote because they cannot get to polls that often are 30 to 40 miles away, he said.

"A lot of our Indian people on the reservations don't have vehicles. We don't have good voter turnout because of distances and lack of transportation," Skye said.

Plans are in the works to hire people to drive Indian voters to the polls, Skye said. A California foundation is being asked to help fund that effort, he said. Some Indians don't vote because they prefer to remain anonymous, Skye said.

"Many people on the reservations feel that if they register to vote, then the government's going to be after them for something. It's kind of a paranoia.

They're afraid the Internal Revenue Service or somebody else will show up at their door and harass them," he said.

Skye insists it is not apathy that keeps many Indians from voting.

"I haven't seen where they don't care," he said.

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The Associated Press contributed to this story. Reach reporter David Kranz at [dkranz@argusleader.com](mailto:dkranz@argusleader.com) or 331-2302.

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029580

**Some S.D. counties list more voters than adults  
Dewey, Ziebach among 26 counties showing surplus**

By Carson Walker  
Associated Press Writer

SIOUX FALLS - Most South Dakota counties have more adults than registered voters.

But in 26 counties - more than a third of the state's 66 - the voters outnumber people 18 and over, according to a comparison of 2001 census estimates and the latest voter registration numbers.

"People who move away but still use that as a residence to vote - that explains some of the difference," said Kea Warne, election supervisor in the Secretary of State's office.

Of all counties, big or small, Dewey County shows 470 more registered voters than adults. The census estimates its population in 2001 as 3,696. Its voter registration list as of Thursday was 4,166.

Ziebach County also has 226 more registered voters than people 18 and older, according to the numbers.

Dewey and Ziebach are two of several counties where state and federal investigators are looking into allegations of voter registration and absentee ballot fraud.

But several other counties without large American Indian populations also appear to have more voters than people, according to the numbers.

Some counties might appear to lose registered voters because auditors can now more easily eliminate duplicate names, Warne said.



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# LOCAL NEWS

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## Fraud cases cloud S.D. elections

By DAVID KRANZ, CORRINE OLSON and PETER HARRIMAN  
Argus Leader

published: 10/20/2002

### 10 counties review questionable voter records; observers speculate about effect on Nov. 5

When Harding County Auditor Kathy Glines sifts through voter registration cards each election year, she usually can tell when something isn't right.

She knows, for instance, that among the 17 new registrations her office has received this year are several high school seniors who will vote for the first time next month in this ranching area in northwest South Dakota.

"I would say I know 100 percent of the people here," Glines said.

Familiarity is the first defense against voter registration fraud in South Dakota's rural counties. Auditors, many of whom have lived in the communities for decades, recognize misspelled names, unfamiliar addresses or forms filed by a person who has left town or died.

But this year, in a South Dakota election that has drawn the attention of the nation because it could determine the congressional power structure, the task of verifying voter registrations in places such as Gann Valley and Timber Lake has become more difficult. Thousands of new applications have poured into county auditors' offices as political parties and other advocacy groups conduct extensive registration drives, primarily on the state's Indian reservations. Requests for absentee ballots are running far ahead of typical election years in many counties. And with the stakes so high, every inconsistency and questionable voting document is being scrutinized.

One man has been charged with submitting fraudulent voter registration cards, and a woman who worked as a private contractor with the state Democratic Party is being investigated for falsifying registration cards.

More than 16,700 names have been added to South Dakota voter registration lists since the June primary. More than 4,100 of the registrations - about 25 percent - were filed in

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counties near or on Indian reservations.

Argus Leader reporters surveyed South Dakota county auditors, finding:

- Auditors in 10 counties, all but one adjoining a reservation, have forwarded questionable registration forms or absentee ballot requests to the sheriff or state's attorney for investigation.
- Of the nearly 400 questionable documents discovered by the auditors, 338 came from Shannon and Pennington counties, where the two investigations into possible voter fraud are under way.
- Sixteen questionable registration forms have been turned over by Ziebach County officials. Twelve documents in Todd County and at least 10 in Bennett County were forwarded to investigators, according to the survey.

Media coverage of the fraud investigations has put the state's voter registration and absentee ballot system under the microscope. But Attorney General Mark Barnett bristles at the categorization of the two investigations as evidence of widespread voter fraud.

"I'm still only aware of two cases where criminal law may have been violated, and you've heard about those," said Barnett. "I just don't want the suggestion out there that there is widespread fraud when we don't have any evidence of that."

### **Two investigations**

Concerns about possible voter fraud surfaced in South Dakota earlier this month. On Oct. 3, Dewey County Auditor Adele Enright alerted Democratic Party officials to possible irregularities with four absentee ballot applications in her county. According to the party, those documents were submitted by Becky Red Earth-Villeda of Flandreau - also known by her Dakota name Maka Duta - an independent contractor working through the Coordinated Campaign, a get-out-the-vote program organized by the Democratic Party.

Democratic Party lawyers said they contacted the four people named on the absentee ballot applications in question and determined that two of the applications contained signatures not made by the person purporting to make them.

Red Earth-Villeda was terminated as a contractor, according to Sarah Feinberg, a spokeswoman for the Democratic Party and the Coordinated Campaign. Feinberg said Red Earth-Villeda was responsible for a large number of registrations from around the state, and so far the rest of them have checked out.

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Federal Election Commission reports show the South Dakota Democratic Party paid Red Earth-Villeda \$12,867 since the beginning of her contract work in mid-June. The money included reimbursement for travel costs and making copies.

Barnett and FBI officials then acknowledged that an investigation, led by federal authorities, was under way.

No charges have been filed. A woman identifying herself as Red Earth-Villeda called a public radio program last week saying she was innocent. Repeated attempts to contact her have been unsuccessful.

On Friday, in a separate case, a Rapid City man, 45-year-old Lyle Nichols, was charged with forgery for allegedly submitting five fraudulent voter registration cards. Workers at the Pennington County auditor's office called the sheriff's department after noticing irregularities in several registration forms.

In one case, the office received a voter registration form for a man who had already registered. But the signature and other information on the new form did not match the old one.

The Native American Voter Education and Registration Project paid Nichols \$3 for every form he returned. That registration effort is a United Sioux Tribes project funded by a grant from the Washington, D.C.-based Bauman Foundation.

Officials said Nichols turned in 226 registration cards, most of which were fraudulent.

If convicted, he faces up to 25 years in prison.

### **Registration process**

Each state determines voter registration and absentee ballot procedures, and those processes vary greatly.

South Dakota law requires eligible voters to register and sets a deadline - 15 days before the election - for registration forms to be filed with county auditors.

In contrast, Minnesota voters can register at the polls on Election Day. North Dakotans are not even required to register to vote. They simply show identification at the polls. In Iowa, voter registration forms are printed in telephone books.

In South Dakota, once a registration is received, the county auditor's office sends a confirmation card to the person who registered. When the voter returns that card, the signature is compared to the original registration.

If the confirmation card is not returned, the voter's name is put on an inactive list, and in order to vote on Election Day,

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the person is required to show a picture identification card.

Several auditors surveyed say they aren't familiar with many residents of the state's Indian reservations, and that makes it more difficult for them to verify the validity of those registrations. In addition, many of those new voters list a general delivery mail address, meaning they pick up their mail at a post office.

It's hard for officials to place those residents in a precinct because the auditor doesn't know exactly where they live. Other new reservation voters don't have telephones, so officials cannot call to verify registration information.

Still, the auditors say, many of the irregularities found among registration forms are simple mistakes.

"Two or three people sent in two or three absentee applications, and we caught it," said Lisa Schieffer, Meade County auditor. "I contacted one of the persons, and he explained to me he just wanted to be sure he got a ballot, so he sent one for his post office box, for his work address and for his home address."

In Brookings County, some South Dakota State University students requested absentee ballots, not realizing that they have to make that request in the counties in which they are registered.

Enright, the Dewey County auditor who discovered some questionable absentee ballot requests, said it's not surprising to find irregularities considering the number of new people being registered.

"With a voter registration drive, you have those mistakes every time, and you have a voter drive every time there's an election," she said.

The county voter registration lists are not exact directories, either. Sometimes, residents move to a new address, or out of a county, and don't retract their old registration. Other times, the resident maintains his old voting address in order to vote in that county or city.

The lists are periodically examined and updated to remove names of those who have died or moved, but the registration records still can contain duplications and inaccuracies.

For example, 26 South Dakota counties, including many reservation counties, have more registered voters than their adult population, according to an Associated Press analysis.

But several counties that do not have large Native American populations also appear to have more voters than people, according to those numbers.

Minnehaha County Auditor Sue Roust said those registration numbers may include inactive voters - those who have not

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voted in at least four years. If those voters go to the polls on Election Day, they will have to fill out a new voter registration card before being allowed to vote and should not be included in the count of registered voters.

As of Oct. 19, Minnehaha County had 87,221 registered voters, according to Roust. There are also 11,386 inactive voters.

### **Effect uncertain**

Registration efforts are important in the state this election year because the battle for the U.S. Senate between Democratic incumbent Tim Johnson and Republican Rep. John Thune is considered a dead heat. A few thousand votes could determine the outcome, and ultimately the decision could sway the makeup of the Senate over which South Dakota Sen. Tom Daschle now serves as majority leader.

Many of the potential new voters live on Indian reservations where registration numbers and Election Day turnouts are notoriously low but where Democrats are traditionally the favored candidates.

In 1968, just before Bobby Kennedy spoke to Los Angeles supporters in the hotel where he later would be assassinated, he placed a call to South Dakota. He had just won the presidential primary here and wanted to know how he had fared on the Indian reservations. His supporters told Kennedy that he had scored a landslide victory on the Pine Ridge reservation, receiving 878 votes. Eugene McCarthy had earned only nine votes and Lyndon Johnson, 2.

Thirty-four years later, some Native Americans say reservation voters still look to Democrats in national elections.

"The vast majority are voting the Democratic ticket. They probably have no idea who the Democratic candidates are. They don't know who Stephanie Herseth is. But they know who gives them problems," said Herbert Hoover, University of South Dakota history professor and author of several publications on Indian-white relations.

The questions of voter fraud this year, however, probably will hurt the Democratic candidates, said former Republican legislator Lola Schrieber of Gettysburg.

"If there is fraud, it will affect the Democrats. They were the ones who hired the persons to get the registrations," she said.

Bob McCaughey, who ran Republican Sen. Karl Mundt's campaigns, agrees.

"I say that at the coffee group mixed with Republicans and Democrats, and I get a pretty unanimous agreement on that," he said.

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Some analysts believe the voter fraud investigations may turn Native Americans away from the polls on Election Day. Some may be fearful of being involved in a controversy, and others could be disillusioned with the entire process.

But Hoover says the issue could play out the opposite way as well.

"When tribal people feel put upon, they will react with greater resolve," he said. "They are no different from any other group. If they are falsely accused, they rally. It could backfire."

Bob Burns, political science professor at South Dakota State University, said it is difficult to predict whether news of the registration investigations will interfere with the fortunes of Sen. Tim Johnson, who heads the Democratic Party ticket in the state.

If the election is decided by a small margin, the loser also may decide to challenge the outcome in court because of fraud concerns.

#### **Past controversy**

This is not the first time there has been election-time controversy surrounding attempts to get reservation voters to the polls.

In 1980, Democratic Sen. George McGovern's re-election campaign planned to give away a free television on a reservation.

"It (the television) was in the building next door to the polling place. You came in, looked at the TV, and they had brochures. Winning it didn't require you to vote," said George Cunningham, McGovern's top aide at the time .

Attorney General Mark Meierhenry heard about the giveaway and told the McGovern campaign what they were doing was illegal. The raffle ended immediately, and the television was removed.

"We probably lost some Native American votes because a lot of them never came back. They were scared away. But we weren't the only ones involved in something like that. There were a lot of places giving free food, and nothing was said," Cunningham said.

In the past, buses traveled through the reservations taking people to the polls, and giveaways, including free cigarettes, were used to attract voters.

Cunningham says the current controversy surrounding reservation voter registration forms is likely to hurt the Democrats on Nov. 5.

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"It is hardly a positive thing," he said.

### **Are changes needed?**

Voter registration investigations in South Dakota generate national interest because of the nature of the races this election year. But the issue also is newsworthy because South Dakota has such a good election record, said Burns. The state traditionally has among the highest voting turnouts in the country.

"South Dakota has no history of voter fraud. We really have a history of clean politics," Burns said. "That really explains the splash this has made. Even the hint of fraud generates a major stir in South Dakota."

Concerns about the process have caused some to speculate that changes should be made, tightening requirements for registration and absentee balloting.

Barnett said he is generally satisfied with the state's election laws but said the Legislature may want to look at the rules concerning absentee balloting.

In Barnett's view, there is a potential for problem in the fact that voters can register and cast an absentee ballot without ever being seen in the auditor's office.

But Kea Warne, elections supervisor for the secretary of state, said the state's election laws already provide adequate protection against voter fraud.

"Just by seeing what's happening now shows the system is working because county auditors are catching the problems," she said.

Burns said some have suggested the state outlaw the practice of hiring people to collect new registrations.

But Roust questions the wisdom of that move.

"When we have groups who are vastly underrepresented - and we know a lot of people on the reservations aren't registered - it's a big job to get those people involved, and I don't know if you can do that with volunteers," she said.

Burns agrees. "I don't really think the law needs to change. Volunteers can be overzealous as much as workers."

Burns said the potential fraud cases being investigated suggest the people involved were trying to defraud their employers in order to make more money rather than deliberately attempting to defraud the election process.

He wishes people would look at the registration drives from another side.

"All of South Dakota should celebrate the fact that 17,000

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(people) previously not registered are going to participate in the election," he said. "That's democracy."

### Registration Investigation

- Nearly 17,000 people have registered to vote in South Dakota since the June primary. There are 523,063 potential voters.

- County auditors have turned over to law enforcement nearly 400 voting registration cards or absentee ballot applications because of discrepancies ranging from misspelled names to ballot requests from deceased residents.

- A Rapid City man has been charged with forgery for allegedly submitting fraudulent registration cards.

- The Minnehaha County Auditor's Office has processed more than 4,800 absentee ballot requests. One was questionable and was sent to the state's attorney's office.

The Associated Press contributed to this report.

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**Suspicious voter registrations found  
Attorney general denies widespread fraud**  
THE ASSOCIATED PRESS

SIOUX FALLS - Auditors in 10 South Dakota counties have turned over nearly 400 questionable voter registration forms to investigators.

All but one of the 10 counties adjoin an American Indian reservation, the Sioux Falls Argus Leader reported Sunday.

Officials in Ziebach County have turned over 16 suspicious voter registration forms to investigators. Twelve documents have been turned over in Todd County and at least 10 in Bennett County.

One man in Pennington County has been charged with submitting fraudulent voter registration cards. And a woman who worked as a private contractor for the state Democratic Party is being investigated for falsifying voter registration documents.

But South Dakota Attorney General Mark Barnett bristles at the idea that the two investigations are evidence of widespread voter fraud in the state.

"I'm still only aware of two cases where criminal law may have been violated and you've heard about those," Barnett said. "I just don't want the suggestion out there that there is widespread fraud when we don't have any evidence of that."

Verifying voter registrations has become more difficult in

this year's election, which has drawn the attention of the nation because it could determine control of the Senate.

Thousands of new applications have poured into county auditors' offices as political parties and other advocacy groups conduct extensive voter registration drives. The state's Indian reservations have been the main focus of those registration drives.

Of the 16,700 new voter registrations in the state, 4,100 of them - about 25 percent - were filed in counties on or near Indian reservations.

Many counties are also seeing a spike in requests for absentee ballots.

Several auditors surveyed by the Argus Leader said they are not familiar with many residents of the state's Indian reservations and that makes it harder for them to verify the validity of those registrations. In addition, many of those new voters list a general delivery mail address, meaning they pick up their mail at a post office.

Still, many of the irregularities found among registration forms are simple mistakes, auditors say.

"Two or three people sent in two or three absentee applications, and we caught it," said Meade County Auditor Lisa Schieffer. "I contacted one of the persons, and he explained to me he just wanted to be sure he got a ballot, so he sent one for his post office box, for his work address and for his home address."

In Brookings County, some South Dakota State University students requested absentee ballots, not realizing that they have to make that request in the counties in which they are registered.

Adele Enright, the Dewey County auditor who discovered some questionable absentee ballot requests, said it is not surprising to find irregularities considering the number of new people being registered.

"With a voter registration drive, you have those mistakes every time, and you have a voter drive every time there's an election," Enright said.

Each state determines voter registration and absentee ballot procedures, and those processes vary from state to state.

South Dakota law requires eligible voters to register and sets a deadline of 15 days before the election for registration forms to be filed with county auditors.

But Minnesota voters can register at the polls on Election Day. North Dakotans are not even required to register to vote. They simply show identification at the polls.

In South Dakota, once a voter registration form is received, the county auditor's office sends a confirmation card to the person who registered. When the voter returns that card, the signature is compared to the original registration.

If the confirmation card is not returned, the voter's name is put on an inactive list, and to vote on Election Day, the person is required to show a picture identification card.

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## 15 false absentee ballot applications found

David Kranz  
Argus Leader

published: 10/25/2002

A voter-fraud investigation has turned up 15 bogus absentee ballot applications in South Dakota so far, and more may be coming, Attorney General Mark Barnett said late Thursday.

State and federal agents targeted 25 South Dakota counties after allegations of misconduct surfaced earlier this month, Barnett said.

In each case, signatures were forged on the applications that a person uses to obtain a ballot, he said.

All the alleged instances of ballot fraud discovered so far are tied to Becky Red Earth-Villeda, Barnett said. Red Earth-Villeda - also known by her Dakota name, Maka Duta - was an independent contractor in the Democratic Party's efforts to increase Native American participation in the election.

Investigators believe Red Earth-Villeda, whose contract was terminated by the Democratic Party, may be linked to as many as 1,750 absentee ballot applications in the state, Barnett said.

"I have no idea how many of those might be false," he said.

Also Thursday, the Fall River state's attorney said the names of two women there were used to forge voter registrations in Codington and Minnehaha counties.

The discoveries are the latest development in a controversy over voter registration and absentee ballot discrepancies. The FBI also is investigating allegations that documents were filed on behalf of dead people and children, particularly in and around Native American reservations.

The allegations have raised political tension in South Dakota with 12 days left until the Nov. 5 election, which features particularly tight contests for U.S. Senate and House.

Barnett, a Republican, said charges will be forthcoming. At this point, the activities of Red Earth-Villeda remain the sole

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focus of the investigation, he said.

"We have 15 cases that we believe were forged absentee ballot applications, and at the end of the day we expect she will be charged," he said.

The Democratic Party initiated an aggressive get-out-the-vote campaign, particularly around reservations, in preparation for the November elections. While both parties traditionally pay staffers to sign up new voters and pursue possible absentee ballot possibilities, the Democrats this year also initiated a program of paying independent contractors on a per-piece basis.

Sarah Felnberg, spokeswoman for the South Dakota Democratic Party, reiterated that the party initiated an investigation on its own when problems first surfaced in early October and notified Dewey County officials of two questionable ballot applications.

The Democratic Party has zero tolerance to anything less than full compliance with state and federal election regulations, she said.

"It is still about one person's activities, and we think it is important that it be resolved before Election Day," she said. "There is no evidence to suggest that one ballot has been affected."

Last week, a Rapid City man who was working under a separate program, sponsored by the United Sioux Tribes, was charged with forging signatures on five registration cards.

On Election Day, it will be up to individual county auditors to determine whether they are comfortable with a signature before they put the ballot in the box, Barnett said.

He would not say how authorities determined which counties Red Earth-Villeda was involved in. The list of counties where the 15 applications were found was not available.

In each case, the investigator tracks down the person whose name is on the application to verify the signature.

"We have interviewed 15 people so far who said, 'That is not my signature.' You have to go out and grind it," Barnett said.

During the probe, one signature was found to be legitimate, and a few people were not sure about theirs, he said.

"We have to go to the bottom and do as many (of 1,750) as we can," Barnett said. "Federal and state agents feel reasonably confident in saying an arrest is likely, but first we want to nail down as much of the facts as we can."

A routine check by the secretary of state's office discovered

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at least two more cases of possible forgery on voter registration cards under the names of women in Fall River County, in the southwest corner of the state.

The cards were filled out in July in Minnehaha and Codington counties. But the two Fall River women say they didn't file the registrations, said State's Attorney Lance Russell.

"This is the first time we've had anything regarding Fall River County," Russell, a Republican, said Thursday.

The duplications were discovered after a routine records purge by the secretary of state's office. Using a computer check first initiated in January, the office compares voter registrations from across the state in order to eliminate multiple registrations by the same person.

A duplicate registration isn't necessarily a cause for suspicion, however. More than 9,000 such cases have been discovered since January, said Chris Nelson of the secretary of state's office. But most of the names come up because people move and re-register without telling the first county they have left.

That's not the case with the two Fall River women.

Lynn Putnam received a card in the mail about a month ago, asking her to confirm her registration information. The 27 year-old Edgemont woman - who is Russell's administrative assistant - brought the card with her to work and dropped it off at the auditor's office.

Auditor Sherrill Dryden told Putnam she received a lot of the cards because of the statewide purge.

"She said it's a coincidence that there is a Lynn Putnam in Watertown with your exact same birth date," she said. "She thought it was kind of suspicious because the person in Watertown had registered at the end of July."

Dryden and Russell did some research and discovered there wasn't anybody by that name living in Codington County.

"I don't know who would do it," said Putnam. "I've never lived there."

She didn't think much of it when she received the verification card in the mail.

"I guess, honestly, I thought maybe they sent those cards to anybody," she said. "I thought maybe it was kind of an update thing, that it was standard before the election."

Russell declined to identify the second woman, who was registered in Minnehaha County, citing confidentiality.

Minnehaha County Auditor Sue Roust said Dryden contacted her about a problem after the secretary of state sent out a

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list Monday showing duplicate registrations.

"The Fall River County auditor recognized her and talked to her. She said she doesn't live in Minnehaha County and doesn't plan to vote here," Roust said.

When Roust's office was contacted about the possible duplication, she checked the two registrations and found that the signatures on the cards were radically different. Surprisingly, the birth date of the woman was correct on the bogus registration, she said.

In both of the Fall River cases, Republican women were registered as Democrat.

Roust said the registration in Minnehaha County was done in July and was part a voter registration drive. A code is required on the cards which indicates it is part of a drive. It does not tell the auditor which program it was a part of or who registered the person.

The suspected registration in Codington County also was a part of a registration drive, according to Auditor Cindy Brugman.

Both Brugman and Roust said an absentee ballot was not requested for the people who were registered in their counties.

State Editor Patrick Lalley contributed to this article. Reach reporter Corrine Olson at colson@argusleader.com or 331-2311.

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## Will possible fraud cases shake voters?

Terry Woster  
Argus Leader

published: 10/27/2002

### Observers debate long-term effect

PIERRE - Elections are fairly fragile institutions.

They are, after all, organized and policed by the same political organizations that compete for the gift of power.

In South Dakota, this social contract has emerged largely unscathed through more than 100 years of electing public servants. But the investigation of possible fraudulent filings of voter registrations and absentee ballot applications - currently under way and focused on two people working under separate voter drives - has prompted discussions of the impact on the Nov. 5 general election.

Officials are quick to point out that the irregularities discovered thus far have not manifested in even one fraudulent vote. But is it possible that in a small state such as South Dakota, where campaign shenanigans are as rare as ballot chads, one bad event could have a disproportional impact on the psyche of the electorate?

The investigation might make headlines and coffee-shop talk, but it should have little impact on public confidence in the state's election system, says a Harvard University government professor with ties to the state.

Thomas Patterson, author of several books about elections and politics in the United States, said drawn-out campaigns and attack advertising are more likely to shake voters' confidence in the election system than will reports of voter registration problems, especially if the possible fraud isn't found to be an extensive and ongoing condition.

"I'm not surprised that this would be a big story there, which it probably wouldn't be in New Jersey, for example," Patterson said. "According to our surveys, voters seem much more likely to be discouraged by the way campaigns are conducted, the endless campaigns. I don't know that they lose trust in the system itself as much as become disenchanted with the way it is run."

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Patterson - who has recently published "The Vanishing Voter," a study of voter involvement in elections and campaigns - is with the Kennedy School of Government at Harvard. He did undergraduate study at South Dakota State University.

State and federal authorities in South Dakota are looking into allegations that a woman working as an independent contractor with the Democratic Party forged signatures on registration cards and absentee ballot applications.

Attorney General Mark Barnett said last week that agents have focused on 25 counties and found 15 apparent cases of forgery on ballot applications. More than 1,700 applications have been linked to the worker - Becky Red Earth-Villeda of Flandreau, also known by her Dakota name Maka Duta - and agents are tracking down each of the applicants to verify their signatures. Charges are probable against Red Earth-Villeda, but the Democratic Party has not been implicated, Barnett said.

A Rapid City man who was working for a voter drive program organized by the United Sioux Tribes has been charged with five counts of forgery in Pennington County for submitting false registrations.

It's unusual to have reports of fraud focusing on individuals in the voter-registration process, as is the case in South Dakota, Patterson said.

"Where the shenanigans usually take place is with those who control the process, not an individual," he said. "What you're facing seems pretty rare."

It's rare enough that Alice Kundert of Mound City can remember nothing quite like it in her four decades as a county official, state auditor, secretary of state and Republican legislator. Unlike Patterson, though, Kundert thinks that just the possibility of wrongdoing in the voting process erodes public confidence and could cause people to shy away from the polls.

"What shakes you about this kind of thing is that the whole system is built on trust, and I'm just sick about this," she said. "It has blemished our image of ourselves. I don't care what other states think. I'm sad that we may think less of ourselves. We should have a lot of pride and confidence in our system of government and in elections. The vote is sacred. If we lose confidence in that, maybe it means some people don't bother to vote who might otherwise take the time."

Mary Ann Bear Heels Cowan of Pierre tends to side with Patterson and sees the investigation as a way to make people understand how important it is to register and vote.

"It bothers us, in a way, when we first hear the news, but as

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we listen and read, we see that this really is a problem with perhaps two individuals, not the whole system," said Bear Heels Cowan, a Lakota rights advocate with the group First Voices. "The focus is kind of high right now on it, but I believe the trust is still there, and most people will be responsible."

Merle Lofgren, longtime newspaper publisher in McLaughlin, blames the practice of paying for registrations.

"It's prostituting the vote, and how can you expect people to trust the system after that?" he asked. "Yes, people are going to lose confidence in the system. Maybe it's a big case, and maybe it's small, but no matter how extensive this thing is, how are you going to know if your votes are all real and equal? Democracy shouldn't be paid for with money, not any part of it."

The news that the name of a woman who had died three weeks earlier in a car wreck appeared on a registration card is especially offensive to Lofgren.

"They used to say the biggest voting precinct in Chicago was the cemetery, and now it looks like the littlest precinct in South Dakota is the cemetery in Dewey County," he said.

Kundert said her only personal experience with money in voting was when she campaigned once for a term as auditor and asked for a vote in a small convenience store in a western town.

"The man said, 'How much will you pay me?' I said, 'You just lost it. I don't need your vote,' " she said. "That kind of stuff just

doesn't happen in South Dakota."

That's probably a typical reaction to the news of the investigation, Patterson said. When the Florida voting system came into the national spotlight during the protracted counting of the presidential ballots two years ago, many states believed their own systems were safe from that kind of problem, he said.

"The idea was, this is Florida's problem; this isn't the way we operate," he said.

While he doesn't think one election cycle with questions about voter registration will cause people to lose confidence in the system, Patterson does see the possibility of doubts accumulating over time.

"All of these things are kind of shots at the system, and they could be additive in a way," he said. "If people are already disenchanted with campaigns, and you add this, it possibly could have some effect."

Bear Heels Cowan said the effect may be to encourage

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Native Americans and whites to work together on voter registration and voting drives.

"These kinds of things happen for a reason," she said. "It's kind of a push-pull thing: Go vote, make sure you're registered, and now we have a few problems. I believe the people have done a good job overall of getting registrations, and perhaps these questions being raised now will make us all more aware of how much the system relies on trust, maybe even to the point that we'll all work together."

Kundert said South Dakota seldom experiences the pressures of big-time campaigning the way it has this year with the U.S. Senate race between Democrat Tim Johnson and Republican John Thune carrying the potential of deciding political control of that body.

"I don't remember anything like this," she said. "So, you get these reports something might be wrong, and 99 percent of you says real voter fraud couldn't happen here. But 1 percent of you says, gosh, I never thought there'd be any cases of false registrations like this, either. So you start to doubt your trust in the whole thing. And that's pretty sad."

Reach Terry Woster at 605-224-2760 or twoster@midco.net.

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## Suspect in voter fraud threatens suit

By DAVID KRANZ  
Argus Leader

published: 10/29/2002

### Flandreau woman says she's the victim of conspiracy

The Flandreau woman suspected by federal, state and Republican Party officials of being linked to possible voter fraud in several South Dakota counties is fighting back, saying she is a victim of a conspiracy to keep Native Americans from voting.

Becky Red Earth-Villeda, also known by her Dakota name, Maka Duta, said in a statement distributed to news media that she is innocent of any links to the forging of absentee ballot applications, voter registration cards and other wrongdoing in the election process.

She also is contemplating charges of her own against those who accuse her.

Attorney General Mark Barnett expects to file charges against her in the near future, saying at least 15 absentee ballot applications handled by her were found to be irregular.

Red Earth-Villeda, 49, accuses officials of a collective conspiracy against her. They continue to "conspire as Republicans to single out my voter registration and absentee ballot application work product for their explanation to the end of charging only me with violations of state and federal law," she said.

The sole purpose of their probe and threats of charges against her is to increase vote totals for Republican candidates in the Nov. 5 election in South Dakota under "color of law," she said.

Barnett has said he has investigators in 25 counties looking for discrepancies in absentee ballot applications.

So far, there is evidence that she handled more than 1,700 such documents. Of those inspected so far, 15 have been found to be invalid. That process is determined by finding the person who has his name on the application. The person then tells investigators whether it has his actual signature.



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#### USA WEEKEND

Profile: P. Diddy

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Responding to Red Earth-Villeda's conspiracy charges, Barnett said: "It will all sort out in the court of law. We have been conducting hundreds of interviews and continue on the course that I discussed in the past."

Red Earth-Villeda describes herself as "the mother of nine beautiful children, a grandmother of five wonderful grandchildren."

Red Earth-Villeda said that during the course of the year, she has devoted her time and energy to getting Native Americans in South Dakota to register to vote in federal, state and local elections. She said she thoroughly read the South Dakota statutes and laws before beginning her work.

"Through libelous assertions, inferences and innuendos by South Dakota Republican Chair Joel Rosenthal, Republican U.S. Senate candidate John Thune and Republican Attorney General candidate Larry Long ... defamation of my character as a campaign worker to register voters ... is now to my emotional and financial detriment," she said in a written statement.

As a result, South Dakota voters have the false impression that she is responsible for "massive voter registration fraud," Red Earth-Villeda said.

Rosenthal said he has always had the position that there appear to be thousands of irregularities, voters that can't be found, dead people requesting absentee ballots and irregularities in at least 20 counties.

"To my recollection, I have not accused her. She gets her day on trial. Democrats have already said she falsely did two of them," Rosenthal said, referring to voter documents.

"There are a lot of things uncovered, and something isn't right. The people on the reservation deserve to be registered to vote. Both parties ought to be able to register their favorable voters, but I want to have a good election and want people to have confidence," Rosenthal said.

The Thune campaign's position is that Red Earth-Villeda says one thing and the Democratic Party says another.

"We hope the truth will emerge before election day," said Christine Iverson, communications director for the Thune campaign.

Red Earth-Villeda also said Matthew Miller, an FBI agent who interviewed her, did not advise her of her rights. He distorted information she gave him when he filed a written report, she said. Because of the inaccuracies she refused to sign the statement for Miller. She plans today to release a photocopy of the Miller document.

"We're referring all calls to the U.S. attorney's office," said

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Dave Heller, supervisor for the FBI office in Sioux Falls.

U.S. Attorney James McMahon would not discuss the case. "I'm not commenting on ongoing investigations," he said.

In the recent controversy, only Red Earth-Villeda has a direct connection to the state Democratic Party registration program, Barnett said.

A Rapid City man, who was working under a separate program run by the United Sioux Tribes, has been charged with five counts of forgery.

Meanwhile, Rosenthal accused Democrats on Monday of "judge shopping" when a law firm for the state Democratic Party asked Federal Judge Lawrence Piersol to be available on election day if they decide to seek an injunction.

Rosenthal said the Democratic Party is putting Piersol in "this untenable ethical position."

Rosenthal should know better, said Sarah Feinberg with the South Dakota Democratic Party.

"He knows it is a standard letter you write at election time. Our lawyer even covered Rosenthal with a copy of the letter as a courtesy," she said.

"In the course of a week, Joel Rosenthal has tried to suppress Native American voting, alienated every state auditor and the secretary of state by suggesting a need for federal election monitors and now discrediting a well-respected federal judge," Feinberg said.

Reach reporter David Kranz at [dkranz@argusleader.com](mailto:dkranz@argusleader.com) or 331-2302

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## Barnett: No illegal ballots found

David Kranz  
Argus Leader

published: 10/31/2002

### Contract worker likely to face charges for submitting forms

The investigation into allegations of voter fraud in South Dakota has not turned up any illegally cast ballots but the woman at the center of the controversy still likely will face charges, Attorney General Mark Barnett said late Wednesday.

Barnett said last week that state and federal authorities had found 15 absentee ballot applications with apparently forged signatures. The bad documents surfaced during an investigation of voter abnormalities in 25 counties including registrations for people who were dead or too young to vote.

News of the probe has fueled nationwide speculation about the integrity of Tuesday's election in South Dakota, which features close races for U.S. Senate and House that are part of fierce struggle for control of Congress.

Throughout the controversy, Barnett has smothered discussion of widespread voting irregularities, saying the investigation was focused on one woman, Becky Red Earth-Villeda of Flandreau who was working as independent contractor under a Democratic Party voter drive.

On Wednesday, the attorney general said the woman's actions, while likely criminal, have not led to fraudulent voting.

"So far I have not found that she had any ballots that have been illegally voted," he said in an interview.

Meanwhile, Red Earth-Villeda was interviewed by state and federal agents for six hours Wednesday. Before the meeting she released a statement admitting she signed absentee ballot applications in the name of the 15 voters in Dewey and Ziebach counties but that she did so only after a mix up about how the system works.

She said the 15 voters in question filled out the applications, which she intended to personally deliver to the auditors in

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those two West River counties. But a Democratic Party worker informed her that, in nearly all cases, those forms must be sent through the mail.

At that point, Red Earth-Villeda admits, she duplicated the signatures on new applications and sent them through the system.

"If I erred in doing so, I pray that Attorney General Barnett will agree with me that I erred on the side of angels," she said in a written statement. "I did not abrogate the spirit and letter of the absentee voting law of South Dakota and I did not work fraud on the county auditors"

Barnett said agents have interviewed the 15 people and ballots have not been submitted by them or in their names.

"It is my suspicion that the voter was not involved in the fraudulent procurement" of the ballot, he said.

Interviews in the case will conclude today, he said.

Red Earth-Villeda likely will be charged "sometime next week or possibly sooner," Barnett said.

Those charges probably will include forgery and theft by deception, he said.

Red Earth-Villeda said she hopes to continue her work to bring more Native Americans into the electoral process.

"I pray that the truth will set me free to get as many Native Americans out to vote as I can so that they exercise their most precious and self determinative right as citizens of the United states, that being the right to vote," she wrote.

An Argus Leader/KSFY-TV poll of likely South Dakota voters shows the much-publicized investigation has some positive effect for Republicans in the election.

Fifteen percent of those surveyed said they are more likely to vote for Republicans because of the controversy. Four percent said they were more likely to vote Democrat.

But the majority, 79 percent, said the allegations would have no effect on Tuesday.

The poll of 805 randomly selected South Dakotans has a margin of error of plus or minus 3.5 percentage points.

The controversy wasn't a deciding factor when James Miller, 64, of Meadow made up his mind to vote Republican in the Senate race.

"But it does seem like the Democrats have their fingers in it with voter problems. I don't think their candidates are responsible, though, probably just the workers," he said.

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Both major political parties have engaged in substantial get-out-the-vote campaigns in the run-up to Tuesday's election.

The race between incumbent Sen. Tim Johnson and U.S. Rep. John Thune is among the closest in the nation. A few hundred vote here and there could mean the difference in the race and ultimately control of the Senate.

But the Democrats' practice of paying independent contractors for each registration and absentee ballot application has come under criticism since the allegations of fraud emerged.

Sarah Feinberg, spokeswoman for the South Dakota Democratic Party, said Barnett's statements Wednesday provide a measure of vindication for the voter drive.

"The attorney general's comments show the allegations that have been coming from the state Republican Party and the Thune camp for what they truly are, which is pure political spin," she said.

State Republican Party Chairman Joel Rosenthal could not be reached for comment late Wednesday.

State editor Patrick Lalley contributed to this article. Reach reporter David Kranz at [dkranz@argusleader.com](mailto:dkranz@argusleader.com) or 331-2302.

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## Absentee forms found burned

Staff & Wire Reports

published: 11/1/2002

### Barnett: Flandreau woman tried to destroy originals

Investigators have recovered charred pieces of absentee ballot applications from a Flandreau woman suspected of forging voters' names on such forms.

Attorney General Mark Barnett said Becky Red Earth-Villeda apparently tried to burn the original applications but then decided to retrieve them.

Investigators suspect Red Earth-Villeda tried to copy information including signatures onto new applications.

"It gets stranger every day," Barnett said. "She claims they are the legitimate signatures (on the charred paper).

The Flandreau woman told Barnett that she copied the names of the applicants from the real documents in order to comply with instructions from Democratic Party officials. Barnett said the woman was told that she could not turn in ballot applications that had been signed but not filled out correctly.

"Many hundreds of those absentee ballot applications that were turned in by her, in fact were her signature, attempting to trace or duplicate the signature on the original form, which was rejected by the party," he said.

Red-Earth-Villeda was hired as an independent contractor by the state Democratic Party. She was fired after a county auditor alerted party officials that forged signatures were showing up on applications for absentee ballots.

Barnett said last week that authorities had found 15 absentee ballot applications with apparently forged signatures. Those documents were discovered during an investigation of voter irregularities in 25 counties.

Despite the suspicions of authorities, only those 15 have been verified by contacting the person whose name is on the application, Barnett said.

Democratic officials have cooperated with the investigation,

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Barnett said.

The probe has been laborious because of the sheer volume of election documents in question, he said. Each person whose name is on the application must be contacted by investigators to verify whether it is their signature on the form.

"I have almost 30 agents on this full time, spread out all over South Dakota, going as fast as we can go. We're doing everything we can to sort it out and advise the county auditors," Barnett said. "We're going to be sorting this out for a long time."

No absentee ballots tied to the questionable ballot application forms have been discovered, he stressed.

Investigators interrogated Red Earth-Villeda for several hours on Wednesday. She also released a written statement admitting that she had duplicated signatures but denying wrongdoing.

Kea Warne, state election supervisor, said county auditors are being advised to set aside any absentee ballots that look suspicious.

"If the signatures on the envelopes containing absentee ballots don't match up with the signatures on the applications for those ballots, we're telling auditors to set the ballots aside," she said.

Joyce Hazeltine, secretary of state, said she thinks the election will go smoothly and there will be no problems if questionable absentee ballots are rejected.

"If there's any question, I'm not taking any chances on having a contested election. Let's just not use them," she said.

If absentee ballots are set aside, they would only be considered if any races are within vote margins that allow for recount requests, Warne said.

"The recount board would have the authority to review those uncounted ballots," she said.

Red Earth-Villeda worked in several counties that encompass or border Indian reservations, he said.

"In Buffalo County alone, we probably have 80 or 100 absentee ballot applications that she signed instead of the voter," Barnett said, adding that forgery charges likely would be filed soon in Minnehaha County because that's where the election forms were turned over to the Democratic Party.



**Forged absentee ballot applications could total between 500  
and 1,000  
Flandreau woman may have charges filed against her today or Monday**

By Joe Kafka  
Associated Press Writer

PIERRE - Forgery charges may be filed today or Monday against a Flandreau woman who has worked to get more American Indians and others to vote on Election Day, Attorney General Mark Barnett said Thursday.

State criminal agents, in conjunction with the FBI and tribal authorities, have investigated the activities of Becky Red Earth-Villeda in 25 counties, Barnett said.

The woman was hired as an independent contractor by the state Democratic Party. She was fired after a county auditor alerted party officials that forged signatures were showing up on applications for absentee ballots.

Barnett said investigators have talked to hundreds of people and hoped to finish up their last interviews Thursday night. He said Red Earth-Villeda is suspected of forging voters' names on 500 to 1,000 absentee ballot applications.

"We've found several hundred voters who say, 'That's not my signature,'" the attorney general said.

When Red Earth-Villeda was told by a Democratic Party official that she could not turn in ballot applications that had been signed by voters but were not filled out correctly, she filled out new forms and traced the voters' signatures on them, Barnett said.

"Many hundreds of those absentee ballot applications that were turned in by her, in fact were her signature, attempting to trace or duplicate the signature on the original form, which was rejected by the party," he said.

Investigators interrogated Red Earth-Villeda for several hours on Wednesday. She also released a written statement Wednesday admitting that she had duplicated signatures but denying wrongdoing.

"I did not abrogate the spirit and letter of the absentee voting law of South Dakota," the statement said. "If I erred . . . I pray that Attorney General Barnett will agree with me that I erred on the side of angels."

Democratic officials have cooperated with the investigation, Barnett said.

The probe has been laborious because of the sheer volume of election documents in question, he said.

"I have almost 30 agents on this full time, spread out all over South Dakota, going as fast as we can go. We're doing everything we can to sort it out and advise the county auditors," Barnett said. "We're going to be sorting this out for a long time."

No absentee ballots tied to the questionable ballot application forms have been discovered, he stressed.

"So far, I've found no evidence that she got her hands on any actual ballots," Barnett said. "I'm not saying no illegal ballots were cast."

Kea Warne, state election supervisor, said county auditors are being advised to set aside any absentee ballots that look suspicious.

"If the signatures on the envelopes containing absentee ballots don't match up with the signatures on the applications for those ballots, we're telling auditors to set the ballots aside," she said.

Joyce Hazeltine, secretary of state, said she believes the election will go smoothly and there will be no problems if questionable absentee ballots are rejected.

"If there's any question, I'm not taking any chances on having a contested election. Let's just not use them," she said.

If absentee ballots are set aside, they would only be considered if any races are within vote margins that allow for recount requests, Warne said.

"The recount board would have the authority to review those uncounted ballots," she said.

Barnett said questionable absentee ballot application forms have been found in several counties, although he was not able to immediately identify all of them Thursday because not all criminal agents had yet filed their final reports. Red Earth-Villeda worked in several counties that encompass or border Indian reservations, he said.

"In Buffalo County alone we probably have 80 or 100 absentee ballot applications that she signed instead of the voter," Barnett said, adding that forgery charges would be filed in Minnehaha County because that's where the election forms were turned over to the Democratic Party.

The attorney general said he doesn't think voters who signed the original forms that were incorrectly filled out have done anything wrong.

"I'm convinced that virtually all these voters are completely innocent."

When Becky Red Earth-Villeda was told by a Democratic Party official that she could not turn in ballot applications that had been signed by voters but were not filled out correctly, she filled out new forms and traced the voters' signatures on them, Attorney General Mark Barnett said. Dakota Briefs Visit [www.aberdeennews.com](http://www.aberdeennews.com) American News Friday, November 1, 2002 7A

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## Ballot-tampering probe requested -- Secretary of state appeals to attorney general

February 26, 2004  
Alma Walzer and Ryan Gabrielson  
*The Monitor*

EDINBURG — Texas Secretary of State Geoffrey Connor wants an investigation into the ballot-tampering claims made by four Hidalgo County voters earlier this week.

Connor requested the assistance of Texas Attorney General Greg Abbott to look into complaints filed by four county residents that at least four mail ballots were tampered with.

"We're drafting a letter to the attorney general's office that will be sent today," said Jennifer Waisath, director of communication for the secretary of state. "The matter in Hidalgo County over the mail ballot issue is now in the hands of the A.G.'s office for a full investigation."

The letter sent by Connor to the attorney general, and obtained by The Monitor, indicates that Connor believes several criminal election offenses may have occurred.

"If these allegations are true, several criminal election offenses may have occurred including unlawful assistance, unlawfully influencing a voter and illegal voting," Connor wrote. "I have enclosed a courtesy copy of a newspaper article from the McAllen Monitor, dated Feb. 25, 2004, detailing the alleged criminal conduct.

"In accordance with the recently adopted policy between our offices with respect to alleged criminal election law violations, we are hereby referring these allegations to your office for investigation," Connor wrote.

Hidalgo County Elections Administrator Teresa Navarro hopes the state investigation will be fully under way shortly.

"It could be — the attorney general moves quite quickly," Navarro said. "They are swift and they don't just send one person down, they send two or three."

Two voters from Weslaco and two from the North McAllen/South Edinburg area contacted Navarro on Tuesday, claiming their mail ballots had been tampered with.

Navarro said the voters should have received a blank ballot to fill out that they would then place in an envelope, sign the back of the sealed envelope and mail to the elections department.

Instead, the four voters said they received a sealed envelope with a ballot already inside, along with a note asking them to simply sign the envelope and mail it.

Navarro contacted the secretary of state's office Tuesday afternoon and asked for assistance. An official from the A.G.'s office contacted her on Wednesday and told her that an investigation had been opened, she said.

The A.G.'s office would not comment on the matter.

Tom Kelly, spokesman for Texas Attorney General Greg Abbott, said once they officially receive a letter requesting assistance from the secretary of state, they will "exercise their independence and

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latitude" to determine whether they pursue the investigation.

The four voters have been cleared by the elections department and can vote in person on their own, Navarro said. The mail ballots in question remain sealed and are being held under lock and key until the investigators arrive, she said.

Also on Wednesday, a fifth voter came forward about a problem with his mail ballot.

"A mail ballot was returned to the elections department, which is unusual for the post office, for them to mark it as 'moved,'" Navarro said. "The voter said he was told by a politiquera that the ballot was going to be mailed to his home. And he assumed that is what she would do."

A politiquera is a paid representative of a political candidate. The fifth voter claimed the politiquera to whom he referred sent his mail ballot to an address other than his home.

The address on the voter's registration card and the address to which the ballot was mailed do not match, Navarro said.

"We don't know the name of the politiquera, but we're in the process of trying to obtain that information," Navarro said.

All five voters who complained of problems with their mail ballots are older than 65. State law protects their identities, Navarro said.

"I'm disappointed because I don't know how I can prevent someone from going to a voter and tampering with their (mail) ballot," Navarro said.

Anyone caught tampering or stealing mail could face some pretty stiff penalties.

"The crime would be considered mail theft," said Vanessa Kimbrough, a U.S. postal inspector. "It's a felony that carries penalties of up to five years in prison and \$5,000 in fines per piece of stolen mail."

Kimbrough said mail carriers aware of stolen mail are supposed to report it to the postal inspection service.

"If anyone has information about these cases, they should call the inspection service in Houston at (713) 238-4400," Kimbrough said.

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Alma Walzer covers Hidalgo County government and general assignments for The Monitor. You can reach her at (956) 683-4422.

Ryan Gabrielson covers Pharr, San Juan, Alamo and general assignments for The Monitor. You can reach him at (956) 683-4462.

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## Rangers launch mail ballot probe

March 06, 2004

Ryan Gabrielson  
The Monitor

EDINBURG — With general voting in the primary election just days away, the Texas Rangers have begun an investigation of the mail ballot fraud allegations that arose last week.

Texas Ranger Sgt. Israel Pacheco said he started his inquiry Thursday after meeting with Hidalgo County Elections Administrator Teresa Navarro to get details of the complaints.

There is no deadline for this investigation, Pacheco said. "We'll just be looking into things as they come."

Two voters in McAllen and two in Weslaco, all older than 65, complained that when their mail ballots arrived, they were already sealed and included a note: "Just sign here."

The complaints were lodged with the elections administration Feb. 24. Two days later, Navarro said she received a mail ballot request from an individual who died in 2001.

Navarro and Hidalgo County District Attorney Rene Guerra said they suspected the complaints stemmed from the work of paid political operatives known in the Rio Grande Valley as politiqueras.

Pacheco has been given the victim names and the names of the politiqueras they suspect are responsible for the fraud, Navarro said.

The Texas Rangers were assigned the cases after Navarro forwarded the complaints to Texas Secretary of State Geoffrey S. Connor, who in turn moved them to the state Attorney General.

Pacheco said the investigation does not have a timeline and that the scope will be determined by the amount of information he receives. While Guerra's office first had indicated it would not have the staff to investigate the ballot fraud claims, he has agreed to prosecute should the Rangers build a case.

"We've already talked to the DA's office and they confirmed they will take the case," Pacheco said.

"(The DA's office) will consider any case generated by our office or any law enforcement having to do with voter fraud," Guerra said. "We don't want to protect any vote fraud."

Friday was the last day of early voting. General voting in the primary begins Tuesday.

"This (investigation) is a good, positive thing they're not waiting until after the election," Navarro said. "I'm glad they are not waiting until after the voting, that they're interviewing people now."

By Friday afternoon, more than 30,000 Hidalgo County residents had voted, Navarro said.

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Ryan Gabrielson covers Pharr, San Juan, Alamo and general assignments for The Monitor. You can reach him at (956) 683-4462.

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Posted on Thu, Feb. 12, 2004

## Arrest follows irregularities in water board voting

Associated Press

**EL PASO, Texas** - West Texas law officers have arrested a precinct chairwoman in connection with an investigation into bogus mail-in ballot requests during recent water board elections.

Patricia "Patty" Lee Pinon was arrested Tuesday on charges of four counts of tampering with government records, each of which is a second-degree felony, El Paso County sheriff's spokesman Rick Glancey said.

Authorities said three of the counts are related to Saturday's El Paso County Water Improvement District No. 1 board elections, while the fourth relates to last year's mayoral election.

Pinon, a Democratic chairwoman of Precinct 81, was free on \$5,000 bond.

"She's been a very involved precinct chair for the longest time, and once she gets behind her candidate, she's a hard worker," county Democratic Party Chairman Rick Melendrez told the El Paso Times in Thursday's editions.

In the early-voting period for the water improvement district's election, the district received about 50 suspicious applications for mail-in ballots that appeared to have been filled out by the same person.

The county Elections Department found that four of those applications were in the names of people who had been removed from the voter rolls because they were dead, said Jesus "Chuy" Reyes, the district's interim general manager.

Glancey could not say whether the charges against Pinon are related to those ballot applications or to others.

Information from: El Paso Times

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**Borderland** Friday, February 13, 2004

## Arrested Demo implicates others

*David Crowder*  
*El Paso Times*

Patricia "Pattie" Lee Piñon, who was charged in connection with a voting fraud scheme this week, implicated other unnamed Democratic Party precinct chairpersons in an interview with an investigator, according to the investigator's arrest warrant affidavit.

Piñon

Sheriff's deputies on Tuesday arrested Piñon, the Democratic Party chairwoman for Precinct 81, on four charges of tampering with government records in connection with requests for mail-in ballots from deceased voters.

Three charges were in connection with Saturday's El Paso County Water Improvement District No. 1 election, and the fourth involved last year's El Paso mayoral election.

Sheriff's spokesman Rick Glancey said, "We are pleased with the direction of our investigation, and by no means is it over by virtue of this arrest."

Sheriff's Detective Neil Baker, in his affidavits to obtain three arrest warrants, said Piñon admitted in an interview with him that a year ago she had voters sign numerous blank applications for mail-in ballots that would be used in future elections.

"The defendant Pattie Lee Piñon then admitted that she did not get anyone's permission to send in the application for mail-in ballots (and) that other Democratic Party precinct chairs also did the same," according to one of Baker's affidavits.

Piñon, in the affidavit, said she didn't know the dead voters had died when she sent in applications for early mail-in ballots using their names.

Piñon could not be reached for comment, nor could County Democratic Party Chairman Rick Melendrez. But the previous party chairwoman, Enriqueta "Queta" Fierro, said Thursday that she was aware that some party leaders went after mail-in ballots in elections but she "wasn't close to anybody doing it."

"I didn't know they made copies like that," she said.

Such activities are highly questionable, she conceded, and when asked whether the party needs to deal with the issue, she said, "It probably does, and it probably

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will in light of what's happened."

In the affidavit to support the fourth arrest warrant involving last year's mayoral election, sheriff's Detective Regan Conner refers to an earlier investigation that looked into 29 applications for mail-in ballots that the County Elections Department received in one envelope last April.

Among them was one in the name of Verda Ponce, who died in 2002. Baker's affidavit states that Piñon took responsibility for the mail-in ballot applications from dead voters in the water board election, one of whom was Ponce.

Before her arrest Tuesday, Piñon telephoned the interim general manager of the water improvement district, Jesus "Chuy" Reyes, and told him of her involvement, according to Baker's affidavit. Reyes, in turn, called the Sheriff's Department, which led to Piñon's arrest after she voluntarily submitted to an interview.

The four counts of tampering with a government record that Piñon faces are second-degree felonies, each punishable by two to 20 years in prison and a \$10,000 fine.

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Star-Telegram.com

Posted on Sun, Dec. 28, 2003

Star-Telegram

## D.A. ready to close illegal voting probe

TX

Associated Press

**HOUSTON** - A seven-month voting fraud investigation that produced nearly 30 indictments is nearing its end, a prosecutor said.

Robertson County District Attorney John Paschall said recently the city of Hearne is ready to put the issue of fraudulent absentee ballots in its May 3 election behind it.

"We have it pretty much under control," Paschall told the Bryan-College Station Eagle in Sunday's editions.

A grand jury investigating the election fraud will be dismissed Wednesday, and no more indictments are expected. A handful of criminal cases in the case are pending.

Allegations of voter fraud surfaced shortly after the election. Defeated mayoral candidates Sally Pryor and Kathy Stracener questioned the results, particularly regarding the high percentage of absentee ballots mailed in by people who claimed to be disabled.

Pryor had copies of hundreds of absentee ballot applications, some with similar signatures, that she had requested before the election.

The newspaper asked the city for copies of those applications, but the election judge had locked them in the ballot box with actual ballots. State law requires that the ballot box remain sealed for 60 days after an election unless a court order is obtained to open it.

The only two people eligible to obtain such a court order - City Attorney Bryan Russ and Mayor Ruben Gomez - initially declined to do so, choosing instead to let the 60-day period pass. Both were elected by wide margins in May.

Gomez changed his mind when the issue didn't die down. The ballot box was opened 19 days after the election, and Paschall obtained the documents for his investigation. The newspaper obtained absentee ballot applications.

The 2000 Census said Hearne had 539 people aged 21 to 64 identified as disabled. The newspaper counted 657 absentee ballot applications from voters claiming to be disabled.

In contrast, the May municipal election in Bryan, a city much larger than Hearne, included 35 absentee ballots from voters saying they were disabled.

In August, Paschall announced 17 people had been indicted on charges of voting fraud, a third-degree felony punishable by two to 10 years in prison and a fine of up to \$10,000. At the top of that list was Charles Workman, who pleaded guilty in October to illegal voting for casting 34 ballots in the Hearne

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election.

Workman didn't cast a ballot in his own name, but he voted for nearly three dozen other residents using absentee ballots. He also forged forms saying some people had moved from one home to another.

Workman was sentenced to five years probation and will not be allowed to campaign or collect absentee ballots during that time.

"We're not going to tolerate it," Paschall said. "I certainly hope everyone understands you have to vote your own ballot."

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TX

Dallas Morning News -Voters: Mail ballot signatures forged

**Candidate denies signing applications; DA investigating**  
04/22/2003

By DAVE MICHAELS / The Dallas Morning News

A Dallas City Council candidate submitted at least 12 mail ballot applications that contained the forged signatures of voters, according to interviews with voters and the elections administrator.

Clair Conly Woertendyke, a candidate for council District 3, submitted about 265 applications for mail ballots this month. The Dallas County elections department spotted the questionable applications because they appeared to be signed by the same person and came from the same West Dallas precinct. The Dallas County district attorney's office is investigating the possibility of forgery.

In interviews, eight voters said they did not sign the applications that Mr. Woertendyke sent to the elections department. And two of the voters whose applications were submitted moved from West Dallas more than a year ago, neighbors said.

Mr. Woertendyke said he did not forge the signatures and argued that it could not be proved whether the signatures are bogus. He said a voter's relative might have signed the application for the voter, and the voter simply forgot. He said neither he nor his campaign volunteers could ask a voter for identification.

"Most of these seniors ... can't remember what they did yesterday," said Mr. Woertendyke, who lost an election for Dallas County clerk in November. "There is always the possibility that someone in the family signed for it and the person [the voter] did not know."

Bruce Sherbet, Dallas County elections administrator, said Monday that he had sent the applications to the Dallas County district attorney's office for investigation.

"There is no question in my mind that the voters didn't sign those applications," Mr. Sherbet said.

District Attorney Bill Hill said Monday that his prosecutors were investigating the information given them by the elections department.

"We are trying to determine whether or not there were forgeries on these mail-in ballot applications," Mr. Hill said. "And if in fact they were forgeries, who actually committed the offense."

In Texas, residents can vote by mail if they are at least 65 years old, disabled or plan to be gone during the period of early voting and on election day. Voters must sign an application for a mail ballot, which authorizes the elections department to send them a ballot.

#### Mail ballot controversies

But in Dallas and some other Texas counties, the mail ballot system has been controversial. Campaign workers have visited the homes of elderly voters to influence their votes and even taken ballots before voters could mark them.

A state district judge voided the results of the Dallas City Council District 4 race in 2001 partially because of mail ballot forgeries.

The Texas Legislature is considering a bill that would tighten regulation of mail ballots. One of Mr. Hill's prosecutors, Ben Stool, helped write the bill with state Rep. Steve Wolens, D-Dallas. It increases the criminal penalties related to mail ballot fraud.

All 12 voters are 65 or older. Several cannot leave their homes without the assistance of relatives, the voters and their relatives said. But some said they vote at the polling place and were visibly upset that someone had submitted an application for them.

"That is not my signature on there," said Norman Jones, a 65-year-old retiree who lives on Vilbig Road. "I try to get down to the polling place to vote. I like to make my vote count."

Said Henry Moore Jr., 70: "If I find out who [signed my name], I'll sue them."

Another couple whose applications were sent, Milas and Lorine Franklin, left West Dallas more than a year ago, said Terry Webster, a former neighbor. Another family, the Alvarados, answered the door on the day a reporter visited the house.

When Mr. Woertendyke sent the applications to the elections department, his campaign put Mark Baker's name and address on the envelope. Mr. Woertendyke said Mr. Baker collected most of the applications in the precinct "except for a few that I picked up."

Mr. Baker is a longtime West Dallas resident who serves on the city's Martin Luther King Jr. Community Center Board. Ed Oakley, one of Mr. Woertendyke's opponents in the May 3 election, appointed Mr. Baker to that board.

#### Connection denied

Mr. Baker said he often tries to help seniors vote by mail. But he denied dealing with the applications that Mr. Sherbet said were forged.

"I have a regular set of people who vote each election," Mr. Baker, 37, said. "These are not the folks I have written up."

But Mr. Baker allowed his name to be written on the envelope that was sent to elections headquarters, he said. Mr. Baker said he collected perhaps 50 of the 265 applications that Mr. Woertendyke sent.

"Clair asked me if he could use my address," Mr. Baker said. "With him being the candidate, he didn't think it was good having it couriered in under his name – for his protection."

Mr. Woertendyke said he used Mr. Baker's name and address because he doesn't believe that the media should know how he conducts his campaigns.

"The media make something out of nothing," he said. "Everything was done perfectly legal, and you didn't have a right to know."

Mr. Woertendyke is campaigning to represent council District 3, an area that covers parts of West Dallas, Oak Cliff and the Mountain Creek area. His opponents are incumbent Mark Housewright and Mr. Oakley, another sitting council member.

#### Three-way race

Mr. Oakley was drawn into District 3 during redistricting. Mr. Housewright and Mr. Oakley said they were upset to learn about the questionable applications.

Those voters who said their signatures were forged have received mail ballots. Several, such as Mr. Jones, said they intended to vote at a polling place.

To cancel the mail application, the voters must submit a request in writing, Mr. Sherbet said.

Otherwise, they have to take the mail ballot to a polling place, where they must surrender it to an election judge to be allowed to vote in person. That measure is intended to protect against people who would vote twice by casting a ballot on election day and then sending a mail ballot later, Mr. Sherbet said.

But the voters who lose their mail ballot or forget to send a cancellation letter might find themselves locked out on election day.

"It's horrible," Mr. Sherbet said. "These folks could lose their right to vote."

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Online at: <http://www.dallasnews.com/localnews/stories/042203dnmetvotefraud.26f30.html>

Original URL: <http://www.jsonline.com/news/metro/feb04/209060.asp>

## No prison in election fraud case

### Activist will spend 6 months at House of Correction for absentee ballot forgeries

By DAVE UMHOEFER  
[dumhoefer@journalsentinel.com](mailto:dumhoefer@journalsentinel.com)

Posted: Feb. 20, 2004

Bolstered by prominent character witnesses, voting-rights activist Vincent Knox avoided prison Friday on three felony convictions that stemmed from an investigation into absentee-voting fraud in a Milwaukee County recall election last March.

Circuit Judge David Hansher rejected a prosecution request for prison time and sentenced Knox to six months in the House of Correction with work-release privileges.

A prosecutor urged Hansher to hold Knox partly responsible for forgeries on 40 of 160 absentee ballots turned in by workers under Knox's supervision during the recall election involving County Board Chairman Lee Holloway. Knox ran a novel absentee drive that put ballots in the hands of his employer, an organization known as the African-American Coalition for Empowerment (ACE).

"Are we going to tolerate ghost votes being cast?" asked prosecutor Kurt Benkley, who sought a three-year sentence for Knox, half of it in prison time. Benkley recounted how a voter in the 5th District race had gone to vote for Holloway's opponent, Yolanda Staples-Lassiter, but effectively was canceled out because an ACE worker had forged an absentee ballot in the voter's name for Holloway.

Benkley argued that the perjury conviction against Knox, for lying to investigators at a John Doe hearing, alone deserved prison time.

"If citizens feel they can lie (at a John Doe hearing) it renders it dull," Benkley said of the seldom-used investigative tactic, in which witnesses are questioned in secret in front of a judge.

Benkley pressed the prosecution's argument that Knox's effort was designed to help Holloway - an allegation that Holloway and Knox have denied under oath. Holloway won the election handily.

Hansher said evidence at trial left it unclear whether there was a grand scheme to defraud, or merely widespread short-cutting by Knox's crew, or both.

"There's more to this than we know," Hansher said, citing the perjury charges leveled against various ACE workers in separate cases.

A jury found Knox guilty last month of three counts relating to a single forged registration card and perjury at a John Doe investigation. The maximum possible sentence was 13 years in prison.

The absentee drive, which city election officials discouraged Knox from undertaking, put absentee ballots in ACE's hands. Knox's crew went door to door in Holloway's district getting people to apply to vote absentee and agree to have the ballot sent to ACE, which then returned to the would-be voters' homes, witnessed their votes and turned in the ballots at City Hall. The drive did not follow that script, trial testimony showed. The unusual process - which Knox calls "vote by mail" - is legal under state law if performed correctly.

Hansher said the case was not a victimless crime. It had tarnished the city's reputation for clean elections, he said.

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Knox pleaded for leniency Friday, citing his long activism for minority voting rights. His attorney, Tom Erickson, sought probation and community service for his client.

Three witnesses vouched for Knox's character, among them Vel Phillips, a pioneer in electoral politics who was Milwaukee's first black alderman. In addition, state Sen. Gwendolynne Moore, former county executive candidate Tyrone Dumas and many co-workers, friends and neighbors wrote letters of support.

In addition to the House of Correction time, Knox must serve three years of probation. As a convicted felon, he cannot vote while under supervision. Hansher forbade him from doing voter registration work while on probation.

So far, prosecutors have had mixed success in the absentee investigation, in which nine people were charged. One of the ACE workers, Barbara Triblett, was acquitted at trial last month. Prosecutors shortly after that reduced the charges in another case, against Velma Jackson, to two misdemeanors. Jackson pleaded guilty and was fined \$200.

Barbara A. Burton, another field worker in the absentee drive, pleaded guilty to a misdemeanor in December and was fined \$200.

Five others who worked for ACE under Knox's supervision are awaiting trial on felony charges.

From the Feb. 21, 2004 editions of the Milwaukee Journal Sentinel

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Original URL: <http://www.jsonline.com/news/metro/jan04/199958.asp>

## Voting-rights activist convicted of fraud

### Knox mishandled drive during county recall election, jury decides

By DAVE UMHOEFER  
[dumhoefer@journalsentinel.com](mailto:dumhoefer@journalsentinel.com)

Posted: Jan. 14, 2004

Milwaukee voting-rights activist Vincent Knox was convicted Wednesday on three felony counts stemming from irregularities in an absentee-balloting drive he ran during a county recall election last March.

A year after he thought he had hit on a novel idea for boosting sluggish African-American voter turnout, Knox is fighting to stay out of prison.

A Milwaukee County Circuit Court jury deliberated five hours before agreeing with the state's contention that Knox, a 25-year veteran of voting-rights causes, had criminally mismanaged aspects of the absentee drive.

Judge David Hansher set sentencing for Feb. 5. Prosecutors, who pledged to seek prison time, sought to hold Knox in jail until sentencing, but Hansher rejected that idea.

Knox's attorney, Tom Erickson, cautioned his client against commenting after the verdict but questioned why Knox was prosecuted for a voter-registration error.

He mentioned the numerous problems with elector signatures in Milwaukee County Sheriff David Clarke's mayoral nomination papers and asked why that was not being investigated.

"It seems curious that Vince Knox, who's spent his whole life getting people to vote, is on trial," Erickson said.

The absentee drive was run by Knox for an organization known as the African-American Coalition for Empowerment (ACE). The move surfaced just days before the recall campaign won by Milwaukee County Board Chairman Lee Holloway.

Holloway hired ACE to help with his campaign, but he testified that the group's absentee drive was separate from his own campaign work and that he was unaware of it. He has not been charged.

The drive, which election officials discouraged Knox from undertaking, put absentee ballots in ACE's hands.

Knox's crew went door to door in Holloway's district getting people to apply to vote absentee and agree to have the ballot sent to ACE, which then returned to the would-be voters' homes, witnessed their votes and turned in the ballots at City Hall. The unusual process - which Knox calls "vote by mail" - is legal under state law if performed correctly.

District Attorney E. Michael McCann responded aggressively when the alleged ballot problems became public. His investigators were at polling places for the March 4 election on Milwaukee's north side and challenged and sealed 10% of the votes cast.

A police handwriting expert had labeled as suspicious the signatures on dozens of absentee ballot envelopes.

In all, Knox and eight other ACE workers were charged. One pleaded guilty to a reduced charge last month. The others are standing trial separately in the weeks ahead.

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For Knox's trial, prosecutors argued that ACE's motive was to get absentee votes for Holloway, an allegation they tried to back up through testimony about absentee ballots cast for Holloway by fictitious voters at non-existent addresses.

Although evidence suggested forgery and other mischief plagued the absentee effort, Knox's case turned on one voter registration card bearing his signature as a deputized voter registrar. The purported voter, Willie Dawson, had his name forged on the card by a girlfriend, testimony showed. And Knox's explanation of how he could have witnessed Dawson sign the card apparently held little weight with jurors.

Jury foreman Mark Scott told a reporter that while the jury respected Knox's political credentials, the number of mistakes made by Knox's voter-recruitment crew suggested tampering.

"Your voting rights are a privilege," Scott said. "It's not to be taken lightly."

Knox was convicted of perjury, misconduct as a voter registrar and election fraud, which carry a combined penalty of up to 13 years in prison.

The perjury count stemmed from his testimony at an investigative hearing conducted before charges were filed.

Knox and ACE are well-known in political circles. Knox successfully sued Milwaukee County on a race-related redistricting case.

From the Jan. 15, 2004 editions of the Milwaukee Journal Sentinel

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# THE ROANOKE TIMES

roanoke.com

Tuesday, August 02, 2005

VA

## State charges former mayor with vote fraud

By Laurence Hammack

981-3239

The indictments allege voters were persuaded to cast illegal votes by absentee ballot. Background on the disputed Gate City voting

GATE CITY - Charles Dougherty was charged Monday with running a campaign of fraud and deceit to win another term as mayor of Gate City.

Dougherty was indicted on 37 felony counts of voter fraud by a Scott County grand jury in the first charges to come from a lengthy investigation of a small-town election marred by allegations of corruption. The indictments allege voters, many of them elderly or prone to manipulation, were approached by the candidate and persuaded to cast illegal votes by absentee ballot.

Although Dougherty was re-elected mayor in May 2004 with a large number of absentee votes, he lost the job a few months later after his opponent, Mark Jenkins, challenged the results in court.

In a complaint filed in circuit court last year, Jenkins blamed not just Dougherty, but also the Scott County registrar's office for some of the voting irregularities.

The office is headed by Willie Mae Kilgore, mother of Republican gubernatorial candidate Jerry Kilgore.

Willie Mae Kilgore has been accused in a separate lawsuit of running the registrar's office in a partisan way, and her role in the 2004 Gate City elections was cited recently when she was asked to resign by the candidate running against her other twin son, Del. Terry Kilgore, R-Scott County.

Yet Joel Branscom, the Botetourt County commonwealth's attorney who was appointed special prosecutor in the case, said the investigation to date has found evidence to support charges only against Dougherty.

Branscom noted that the probe is ongoing.

"When you stir a pot like this, you never know what might come up," he said.

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Monday's indictments marked the second legal action in less than a week involving election fraud in far Southwest Virginia. Last Wednesday, the commonwealth's attorney in neighboring Wise County called for a special grand jury to investigate allegations of vote-buying and ballot theft in May's elections for the town council of Appalachia.

Dougherty, a former Scott County sheriff's deputy who works at the county's regional jail, was charged with 18 counts of aiding and abetting in violating the absentee voting process, 17 counts of making a false statement on an absentee ballot application, and two counts of conspiracy.

Many of the charges involve people who gave false reasons for voting by absentee ballot. Absentee voting is allowed in Virginia under certain circumstances, such as for people out of town on Election Day or unable to vote in person because of health reasons. It is a felony to make a false representation on an absentee ballot application.

Critics of the absentee voting process in Virginia say it is easy for an unscrupulous candidate to persuade a voter in private to obtain absentee ballots under false pretenses.

Some of the absentee ballot applications in the Gate City election contain similar reasons for a voter not being able to make it to the polls, such as the ailment of "crippling arthrim." [sic]

In Dougherty's case, authorities allege, the candidate took it a step further by also assisting the voters in casting their ballots.

Many people told a state police investigator that they "were voted" by the candidate. "It's a new phrase that I am still trying to find a definition for - 'He voted me,'" Branscom said.

In an interview in February, Willie Mae Kilgore said it is the voter's responsibility to be truthful on absentee ballot applications. As registrar, Kilgore said, she must take their word for why they cannot vote in person.

Rather than charge the voters, Branscom chose to hold the candidate accountable.

"When you subject yourself to 370 years in prison for trying to become the mayor of a small town, you're putting your liberties at risk when you do it," he said.

Each one of the 37 charges Dougherty faces carries a maximum punishment of 10 years in prison. He will be allowed to turn himself over to authorities and remain free on

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a personal recognizance bond, Branscom said.

Dougherty could not be reached for comment Monday.

In an interview earlier this year, he said he did nothing wrong in the weeks leading up to the town elections of May 4, 2004.

"I've always worked the absentee ballot hard in every election," he said. "That's part of campaigning. When people say they're going to be out of town or in the hospital, I encourage them to go out and vote absentee."

And as it turned out, the absent electorate proved crucial to Dougherty's two-vote re-election victory.

Of 158 absentee ballots cast in the mayor's race - about one of every five votes cast - Dougherty received 138. Jenkins was quick to challenge the results, and a three-judge panel invalidated the election in September. Jenkins was then named mayor by a new town council appointed by the judges.

Jenkins said Monday he was relieved to hear that criminal charges finally have come from the concerns he raised 15 months ago.

"The voting system is something that we should not be messing with," he said. "It's the foundation of freedom."

The mayor said he hopes the investigation will yield additional charges against others whom he believes have been involved in manipulating the absentee vote in Scott County. "This has been going on for years," he said.

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# THE ROANOKE TIMES

roanoke.com

Wednesday, August 03, 2005

JA

## Residents say former mayor filled out ballots

By Laurence Hammack

981-3239

"He done the voting, but I signed the paper," Vernoil Littrell said of Gate City's ex-mayor Charles Dougherty. Background on the story

GATE CITY - Vernoil Littrell had lots of reasons for not being able to vote in person in last year's town election: For one thing, he was confined to his home, suffering from crippling arthritis and a bad heart.

He was also working a 13-hour shift at Food Lion on Election Day, according to his absentee ballot application - a document that authorities say was falsified. "I don't even go to Food Lion," Littrell said Tuesday. "I don't know why he put all that down."

The "he" Littrell was referring to is Gate City's former mayor Charles Dougherty, who was charged Monday with election fraud and making false statements on absentee ballot applications submitted on behalf of Littrell and 19 other town residents.

In a brief interview Tuesday, Dougherty said he is innocent of the 37 felony indictments returned against him by a Scott County grand jury.

According to Littrell, Dougherty came to his apartment complex last April looking for votes. Seeking re-election at the time, the mayor had a stack of blank absentee ballot applications in his hand.

Littrell said he signed the paperwork that Dougherty filled out. In handwriting that appears similar to that on other absentee ballot applications on file at the county courthouse, the following reasons are listed for Littrell not being able to vote in person: "crippling arthritis; confined to home; heart condition."

He does have arthritis, Littrell said. And he is confined to his home.

But, he said, "I ain't got no heart problem. I went to the doctor last week. My heart's all right."

The absentee ballot application was submitted to the Scott County registrar's office, which issued Littrell a mail-in ballot

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- even though the application seems to raise the obvious question of why someone with so many ailments could be working 13 hours at Food Lion.

After the ballot arrived in the mail, Littrell said, Dougherty came back to his apartment to help him vote. The way he tells it, the mayor did more than help. He filled out the ballot, voting for himself.

"He done the voting, but I signed the paper," Littrell said.

Botetourt County Commonwealth's Attorney Joel Branscom, who last year was appointed special prosecutor to oversee a state police investigation of the election, said other people have also said they were "voted" by Dougherty under similar circumstances.

Absentee voting abuses - which are also the subject of a special grand jury investigation into another election in neighboring Wise County - can allow dishonest candidates to amass a stealth electorate by focusing on voters who can easily be manipulated, critics of the process say.

Dougherty made the rounds in Littrell's apartment complex, where most of the residents are elderly or disabled, the 67-year-old Littrell said.

"All the way around," Littrell said, waving his arm to indicate the path taken by the allegedly vote-hungry politician that day.

On the other side of town, Dougherty was also seen knocking on the doors of Clinch View Manor Apartments, a government-subsidized complex for the elderly, disabled and handicapped.

He found Maxie Overbey in the laundry room.

"He hunted me down," Overbey said. "Or he looked 'til he found me, anyway."

Like Littrell, Overbey said she signed a blank absentee ballot application that Dougherty filled out. And like Littrell, her reason for not being able to vote was crippling arthritis.

While she does have a touch of arthritis, Overbey said it never prevented her from driving to the polls to vote in other elections.

Voting by absentee ballot would save her a trip to the polls, Overbey said she was assured by Dougherty. It was only after a state police investigator came knocking on her door that she took a close look at the absentee ballot application.

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"Oh, Lord. I hate that I did that," she said. "I got took in by it."

A strong showing of absentee votes helped Dougherty squeak out a two-vote victory on May 4, 2004. But his re-election was later invalidated when his opponent, Mark Jenkins, challenged the results in court. Jenkins was later appointed mayor by a new town council named by a three-judge panel that heard the case.

Now, nearly a year later, the botched town election has gone from being the subject of a lawsuit to an ongoing criminal investigation.

After hearing from a state police investigator Monday, the grand jury charged Dougherty with 18 counts of violating absentee voting procedures, 17 counts of making false statements on ballot applications, and two counts of conspiracy.

In a brief telephone interview, Dougherty said he is innocent.

"It was elderly people, mostly, that I voted," he said. "They were the ones that signed the affidavits saying they couldn't go to the polls.

A short time after proclaiming his innocence, Dougherty turned himself over to authorities and was allowed to remain free on a personal recognizance bond. He is scheduled to be arraigned Aug. 15.

While the charges are pending, Dougherty also will keep his job as a correctional officer at the Southwest Virginia Regional Jail in Duffield. He is presumed innocent of the nonviolent charges, said Maj. Matthew Pilkenton of the regional jail.

In an earlier interview, Scott County registrar Willie Mae Kilgore said it is the voter's responsibility to give an honest answer when requesting permission to vote by absentee ballot. Absentee voting is allowed in Virginia only under certain circumstances, such as a voter being out of town on Election Day or unable to make it to the polls because of illness or disability. Making a false statement on an absentee ballot application is a felony that carries up to 10 years in prison.

But Branscom has said he is not comfortable bringing charges against people who were taken advantage of. To date, Dougherty is the only person charged in the investigation.

Ronald Kindle, who lost a bid for town council in the same election, said Tuesday that he believes the registrar's office

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should have known that something was amiss.

He and other town residents questioned whether powerful political connections will prevent the full story from ever being told in a courtroom.

Willie Mae Kilgore is the mother of twin sons, Del. Terry Kilgore, R-Scott County, and GOP gubernatorial candidate Jerry Kilgore. Her husband is the longtime chairman of the Scott County Republican Party, and a third son heads the county economic development authority.

While the registrar's politics have been questioned in lawsuits, Branscom said the criminal investigation has produced no evidence to implicate the office - at least not so far.

"I never say never," the prosecutor said. "But certainly at this point I have no intention of going forward in that direction."

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## 08.06.03 Bjorklund says clerk raises more questions with official response

By GARY HARMON *The Daily Sentinel*

Mesa County Clerk Janice Ward's official response to his complaint about the 2002 election "raises more questions than it answers," Tom Bjorklund said Tuesday.

Bjorklund has wrangled for months with the clerk's office and filed a complaint last month asking Colorado Secretary of State Donetta Davidson to investigate discrepancies he discovered in the course of studying records of the election.

In her response to Bjorklund's complaint, Ward described the complaint as meritless and an effort to "cast a cloud of suspicion" on her office.

"They're trying to confuse the issue," Bjorklund said Tuesday, pointing to a section of Ward's response dealing with a group of voters whose names appeared on records supplied by the Colorado secretary of state's office, but not on records supplied by the clerk's office to him less than a week after the election.

The nut of Bjorklund's complaint concerns 67 voters who responded to surveys — and in some cases signed affidavits — that they cast ballots in the primary election.

Ward's response addressed some of those cases, explaining some and in other cases simply noting that there was no record of participation in the 2002 primary.

Bjorklund said that all names of people whose claims to having voted in the election weren't reflected in the records would be passed on for further investigation.

If a voter presents a claim to having cast a ballot in the primary that isn't reflected in the records, "Our office would investigate," said Amy Storm-Farley, chief deputy clerk. "Our office not been approached by any elector directly claiming what Mr. Bjorklund is claiming."

One resident who signed an affidavit that he voted in the primary said Tuesday he was "almost positive" of his participation, though he had no specific recollection of casting a ballot.

"I'm a voter," Don McGuire said.

Voter John Grimsley, who was cited on the Bjorklund list, said he had no specific recollection of voting or not in the primary. Another, Carl Burley, said he remembered specifically voting in the November election, but couldn't recall a specific memory about voting in the primary.

Phone calls to several others on the list weren't returned immediately.

It makes little sense that those voters wouldn't have cast ballots, Bjorklund said, because they tended to be politically active, donating to and organizing campaigns. One was a significant Ward contributor, he said.

Aspects of the dispute now have reached district court and the Mesa County District Attorney's Office.

A hearing is scheduled to continue later this month in a case in which Ward sought a ruling on whether some of the information sought by Bjorklund was public record.

Investigators with the district attorney's office also are studying an affidavit to determine whether a crime was committed when the clerk's office disposed of unsigned signature cards after the election.

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08-304



The unsigned cards, which were left over after voters presented signed cards to receive ballots at polling places, also are an important part, in their absence, of Bjorklund's case.

The unsigned cards are legitimately a part of the audit trail for the election, Bjorklund said, and their absence is suspect.

Although Ward has promised cooperation, Bjorklund said, the clerk's office "has been less than helpful," in his case.

Officials with the secretary of state are to pick up the primary election records Monday and take them to Denver for an audit.

{M4Gary Harmon can be reached via e-mail at [gharmon@gjds.com](mailto:gharmon@gjds.com).

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NC

## Precinct workers gone after probe

By BEN EVANS, The Herald-Sun  
March 29, 2004 10:05 pm

DURHAM -- The Durham County Board of Elections has cleaned house at an eastern Durham polling precinct and will hire new precinct judges after a state investigation into ballot fraud in the November election found irregularities but no clear-cut wrongdoing.

The state Board of Elections closed its investigation Monday without recommending criminal charges. Instead, the state agency recommended that the six judges and assistants from the Durham precinct step down, even those who were not involved in the alleged incident. Durham elections Director Mike Ashe said precinct officials already have agreed to that request.

"Something happened in the precinct. The numbers don't jibe, and precinct officials were making allegations," Ashe said. "On any given Election Day, the huge, huge majority of our precincts score an A-plus. On this day in this particular precinct, they scored a D-minus, and it's disappointing."

"I don't know if anyone will ever know what happened," he said, emphasizing that the allegations involved only a handful of ballots and would not have affected the election's outcome even if proven true.

The probe centered around chief judge Inez Gooch of Precinct 52, located at Evangel Assembly of God on Lynn Road, off Miami Boulevard in eastern Durham.

One of Gooch's fellow precinct workers, Ruthy Jones, told county elections officials that she saw Gooch sitting at a precinct table filling out a stack of about four to six ballots on Election Day. Jones said she asked Gooch what she was doing with the ballots, and Gooch responded that she was holding them for her children, who are voting-age adults, Jones said.

Later, Jones, a Republican, saw Gooch, a Democrat, walking toward the ballot tabulator with a handful of ballots. Knowing that Gooch already had voted her own ballot, Jones said she confronted Gooch as she tried to insert a ballot into the tabulator, telling Gooch that she was breaking the law. Gooch relented and walked back to her workstation, sliding the ballots into a storage tub containing election supplies, Jones said.

After the polls closed, the official vote count found that the number of ballots inserted into the tabulator didn't match the number of "authorization to vote" forms that had been handed out that day. The authorization forms are the documents handed out after voters verify their names and addresses. Voters then exchange those forms for ballots at a separate table.

In addition -- after a narrow margin in the City Council race between Diane Wright and Thomas Stith prompted a recount -- officials found eight more ballots in Precinct 52 than were originally counted on

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Election Day.

Gooch, who refused to discuss the situation Monday, has denied submitting fraudulent ballots for family members, and the state investigator said his probe uncovered no pattern or clear evidence of willful wrongdoing.

"When it was presented to us, we pretty much thought it was a shut and closed case, but when we started looking at it, we realized it was a little more muddled than that," state elections Director Gary Bartlett said. "[Our investigator] tried to get as close to the truth as he could."

Ashe said Monday that he was pleased with the investigation. But in a memo sent to the state in November, he wrote that he suspected misconduct and that Precinct 52 had been having administrative problems for years.

In the memo, he "surmis[ed]" that Gooch was illegally filling out ballots. He suggested that the ballots Jones saw Gooch put in a storage bin on Election Day were subsequently found and included in the recount, explaining the higher number of ballots in the second count.

"I believe that other precinct workers were either 'in on it' or at a minimum looked the other way," he wrote.

Another finding from the probe was that one of Gooch's daughters, Sandra F. McCallum, was working as a precinct assistant in Gooch's precinct, even though the state bars family members from working together in precincts.

Precinct judges are recommended by local political parties and appointed by county elections boards. They are paid between \$85 and \$125 for their work on Election Day, plus additional payments of between \$15 and \$25 for training sessions.

URL for this article: <http://www.herald-sun.com/durham/4-464372.html>

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ballot box and theft

Focus:  
election and crime

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FOCUS - 86 of 340 DOCUMENTS

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March 28, 2003 Friday Utica Edition

**SECTION:** LOCAL; Pg. 4

**LENGTH:** 1775 words

**HEADLINE:** The Record

**BYLINE:** Staff Reports

**BODY:**

Police NewsCourt date postponed in PBA election case

UTICA — A court date for a civil action by Utica police officers alleging ballot box tampering in the most recent police union election was adjourned to April 17 and 18, court officials said Thursday.

The legal action, requesting a new election, was filed in state Supreme Court last month by Utica police Sgt. Gary Glatt, who was defeated by incumbent Sgt. James Franco in a bid for the John E. Creedon Police Benevolent Association presidency during the Dec. 9-10 election.

The action alleges a discrepancy in vote tallies as well as improper placement of the ballot box and the immediate disposal of the ballots after the election, court documents state.

— Kelly Hassett

Police probe death of baby

UTICA — Utica police are investigating the death of a baby who died in its crib Thursday on West Street, Lt. Mark Williams said.

Further details could not be learned Thursday night.

— Cecilia Le

Police arrest 3 on drug charges

UTICA — Police Thursday arrested three people and seized an ounce of crack cocaine with a street value of \$2,500, marijuana and money in the 1200 block of Whitesboro Street, the state police Community Narcotics Enforcement Team said.

Terrel L. Loadholt, 24, was charged with criminal possession of crack cocaine with intent to sell, a felony. Two other Uticans, ages 22 and 27, were charged with unlawful possession of marijuana.

Loadholt was sent to Utica City Jail pending his arraignment today. The other two were released on appearance tickets to return to Utica City Court.

— Cecilia Le

Stolen property: State police in Herkimer charged a man Thursday with numerous vehicle and traffic law violations on state Route 5 in Schuylers. He was also charged with criminal possession of stolen property after police discovered the registration plate on his vehicle was stolen, police said.

**BIRTHS**

Faxton-St. Luke's Healthcare

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Crane — To David and Elizabeth Crane, Holland Patent, March 26, 2003, a son.

Hart — To Jerry and Sarah Comstock Hart, Ohio, March 25, 2003, a son.

Lebron — To George Lebron and Heather Sebastian, Utica, March 26, 2003, a son.

Patterson — To John Patterson and Tiffany Cook, Utica, March 26, 2003, a son.

Schachtler — To Christopher and Kimberly Valenzano Schachtler, Waterville, March 26, 2003, a daughter.

#### Out-of-town births

Paulson — To Karl Paulson and Nicole Leo, Utica, at Crouse-Irving Hospital, Syracuse, March 18, 2003, a daughter.

Send out-of-town birth announcements to Out-Of-Town Births, Observer-Dispatch, 221 Oriskany Plaza, Utica, NY 13501.

#### DEATHS

Azzarito, Peter, 92, of Utica, died March 27, 2003. Arrangements by Matt Funeral Home, Utica.

Ciamaga, Emily, 76, of New Hartford, died March 26, 2003. Arrangements by Kowalczyk Funeral Home, Utica.

Costello, Marguerite J., 56, of North Utica, died March 27, 2003. Arrangements by Heintz Funeral Home, North Utica.

DeMichele, Dominick J., 76, of Utica, died March 26, 2003. Arrangements by Eannace Funeral Home, Utica.

Gressler, Lorraine P., 55, of Little Falls, died March 27, 2003. Arrangements by Chapman-Moser Funeral Home, Little Falls.

Guaspari, Lena L., 87, of Rome, died March 27, 2003. Arrangements by Nicholas J. Bush Funeral Home, Rome.

Hazard, Elisabeth A., 77, of Earlville, died March 26, 2003. Arrangements by Burgess & Tedesco Funeral Home, Earlville.

McNamara, James, 73, of Blossvale, died March 25, 2003. Arrangements by Barry Funeral Home, Rome.

Phelps, Charlotte S., 66, of Greensboro, N.C., and formerly of Utica, died March 26, 2003. Arrangements by Forbis & Dick Guilford Funeral home, Greensboro.

St. Germain, Bertha, 92, of Ilion, died March 26, 2003. Arrangements by Nunn & McGrath Funeral Home, Utica.

Stasio, Thomas L., 78, of Rome, died March 25, 2003. Arrangements by Bottini Funeral Home, Rome.

Stenglein, Herbert, 73, of Morrisville, died March 25, 2003. Arrangements by Burgess & Tedesco Funeral Home, Morrisville.

Wyman, Tech. Sgt. David E., 33, of Maxbass, N.D. and formerly of Deansboro, died March 19, 2003. Arrangements by Kloster-Northrop & Bentz Funeral Home, Waterville.

E Obituaries — 2B

#### LOTTERIES

Thursday

Midday

Numbers: 314

WinFour: 2570

Night

Numbers: 174

WinFour: 5151

Pick 10: 2, 3, 6, 7, 13, 15, 22, 23, 26, 31, 32, 36, 38, 40, 44, 47, 57, 59, 65, 68

Take 5: 8, 20, 23, 32, 37

Wednesday

Midday

Numbers: 240

WinFour: 7486

Night

Numbers: 775

WinFour: 7137

Pick 10: 12, 16, 18, 20, 21, 25, 27, 28, 30, 37, 41, 49, 55, 56, 58, 59, 68, 73, 74, 76

Take 5: 12, 18, 24, 25, 37

Lotto: 21, 32, 38, 47, 48, 58. Bonus 46

Bankruptcy filings

The following people and organizations filed for bankruptcy protection from the U.S. Northern District Bankruptcy Court.

Vincent and Elizabeth DArrigo, 6089 State Route 167, Little Falls, Chapter 13.

Richard Joseph Fedor, 5813 Youngs Road, Vernon Center, Chapter 7.

Michael and Cheryl Tartaglia, 4 Wood Road, Apt. D-6, Whitesboro, Chapter 7.

David M. Ricketts, 132 Cherry Lane, Sherrill, Chapter 7.

James G. and Jo Ann M. Salamone, 261 Church St., Little Falls, Chapter 7.

David H. and Gloria J. Cox, 308 Russell St., Chittenango, Chapter 7.

Marie A. Cook, 1966 Walker Road, Camden, Chapter 7.

Wendy M. Smith, PO Box 1018, Route 20, Morrisville, Chapter 7.

William L. and Vincetta R. Borst, 4517 State Route 49, Rome, Chapter 7.

David M. and Leta A. Catalani, 8856 Lachausse Road, Boonville, Chapter 13.

Dale M. Budlong, 53 Stone Ridge Lane, Lee Center, Chapter 7.

Robin E. Windhausen, 5762 E. Main St., Verona, Chapter 7.

Jessica A. Colvin, 329 Washington Ave., Oneida, Chapter 7.

Wayne A. and Betty Kicak, 206 W. Bloomfield St., Rome, Chapter 7.

Ward Bonds, 401 N. Levitt St., Apt. 14, Rome, Chapter 7.

Paul F. LaVeck, 316 Third Ave., Frankfort and Kim M. LaVeck, 226 Main St., Ilion, Chapter 7.

Sue D. Breen, 105 S. Berkey Drive, Chittenango, Chapter 13.

Richard Henry Clark Jr., 10375 River Road, Camden, Chapter 7.

Steven C. Linn, 1707 Lincoln Lane, Rome, Chapter 7.

Randolph G. and Jill M. Miller, 37 Whitesboro St., Yorkville, Chapter 7.

Deborah A. OBryan, 512 Main St., New York Mills, Chapter 7.

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John J. Prosinski, 223 Wildwood Ridge, Frankfort, Chapter 7.  
Tari L. De Mauro, 161 East Clark St., Ilion, Chapter 7.  
Patrick J. and Cheri L. Citro, 1503 Redwood Ave., Utica, Chapter 7.  
Michael Khiamdavanh, 1509 Lenox Ave., Utica, Chapter 7.  
Mike J. and Karen L. Doolen, 8120 Seneca Mobile Manor #102, Clinton, Chapter 7.  
Philip and Maryjane Muscarella, 5635 Rome-Taberg Road, Rome, Chapter 7.  
Diane Kane, 4425 Stuhlman Rd. C3, Vernon, Chapter 13.  
Dianne M. Miller, 18 Oswego St., Apt. 4, Camden, Chapter 7.  
James D. Lancette, 6594 Brewer Road, Oneida, Chapter 7.  
Dolores M. Varano, 5988 Cavanaugh Road, Marcy, Chapter 7.  
Dolores M. DesGrosielliers, 297 Spohn Road, Ilion and Daniel L. DesGrosielliers, 82nd Ave., Apt. 2, Ilion, Chapter 7.  
Joseph A. Acquasanta, 110 1/2 Sixth St., Rome, Chapter 7.  
Amanda J. Girven, 78 Myers Road, Lee Center, Chapter 7.  
Eva M. Westcott, 15 Meyers Road, Lee Center, Chapter 7.  
Jodi L. Saracino, 22 North Helmer Ave., Dolgeville, Chapter 7.  
Mehmed and Adisa Mededovic, 1204 Kathleen St., A-2, Utica, Chapter 7.  
Kenneth B. and Beverly J. Firman, 418 3/4 N. Prospect St., Herkimer, Chapter 7.  
Melissa J. McCann, 138 Bono Blvd., Frankfort, Chapter 7.  
Stephanie A. Seely, 111 Richardson Ave., Utica, Chapter 7.  
Dawn Elizabeth Winston, 231 C Hillcrest Manor Courts, Utica, Chapter 7.  
Felicia Marie Greene, 1211 Neilson St., First Floor, Utica, Chapter 7.  
Timothy James Brown, 150 Sale Road, West Winfield, Chapter 7.  
Jeffrey John Henry Bruce, 610 Schumaker Road, Mohawk, Chapter 7.  
John and Eleanor Wellington, 208 Frank Drive, Mohawk, Chapter 7.  
Gary W. Sutch, 933 Mary St., Utica, Chapter 7.  
Rachel Hopkins, 10601 Hulser Road, Lot 49, Utica, Chapter 7.  
Ann Briggs-Lavine, 9559 Harris Road, Lee Center, Chapter 7.  
Alfred M. and Bonnie M. Pierson, 27 Summit St., Middleville, Chapter 7.  
Joseph H. and Viola G. Bordelon, 6778 Route 20, PO Box 103, Bouckville, Chapter 7.  
Michael E. Garramone, 12187 Woodhull St., Forestport, Chapter 13.  
Christopher M. and Rhonda A. Ingham, 1104 Jervis Ave., Rome, Chapter 7.  
Rebecca L. Hoffman, 226A Hillcrest Manor Court, Utica, Chapter 7.  
Donald Murle McLain, 330 Washington Ave., Oneida, Chapter 7.  
Steven James Westcott, 444 Park Drive Manor, Rome, Chapter 7.  
Neil Alexander, 1317 Thorn St., Utica, Chapter 7.  
Rafael Picart, 1243 Hammond Ave., Utica, Chapter 7.

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Robert and JoAnn Giotto Beaty, 610 Mapledale Ave., Utica, Chapter 7. Crystal E. Murphy, 331 Second Ave., Frankfort, Chapter 7.

Thomas J. Lisowski, 344 Fenton Lane, Boonville and Liesa J. Lisowski, PO Box 146, Lee Center, Chapter 7.

Patricia E. Denney, 9031 State Route 20, Waterville, Chapter 7.

Dorinda D. Snyder, 10 N. Helmer Ave., Dolgeville, Chapter 7.

Pauline M. Kraeger, 33 Bramblewood Road, Clark Mills, Chapter 7.

Charles R. Sholtzhauer Jr., 41 Seneca Ave., Oneida, Chapter 7.

Dominick A. Cittadino, 1671 Brinckerhoff Ave., Utica, Chapter 7.

Diane Patricia and Donald James Russ Jr., 6176 McLain Road, Oriskany Falls, Chapter 7.

Sarah A. Stemmer, 1106 Rutger St., Utica, Chapter 13.

John K. Fonner, 5001 Clinton Road, Apt. 22B, Whitesboro, Chapter 7.

Paul W. and Sandra J. Maikranz, 9471 Center St., Holland Patent, Chapter 7.

Glenn J. Roback, 39 Kenyon Court, Utica, Chapter 7.

Richard J. and Tracie A. Pasquale, 503 Second Ave. Ext., Frankfort, Chapter 7.

John Purdy, 1787 Holman City Road, Clayville and Cynthia Purdy 6 Ellis Ave., Apt. 5, Whitesboro, Chapter 7.

Peter Stockton, 14 Center St., Ilion and Bonnie Stockton, Prospect Street, Ilion, Chapter 7.

Robert L. Davey Jr., 6453 State Route 233, Rome, Chapter 7.

Marie E. Sassenbury, 615 West Dominick St., Rome, Chapter 7.

Melissa Lawrence, 202 Folts Road, Herkimer, Chapter 7.

John P. and Michele A. Boucher, 209 Winchester Drive, New Hartford, Chapter 7.

Kevin M. Seymour, 8214 State Route 294, Apt. 2, Boonville, Chapter 7.

John J. Kurgan, 25 Henderson St., New York Mills, Chapter 7.

John J. and Stacy L. McNicholas, 123 Cherry Lane, Sherrill, Chapter 7.

Francis Charles Goff Jr., 9738 Campbell Road, Sauquoit, Chapter 7.

Sha-ron Dock, 509 W. Dominick St., Rome, Chapter 7.

Dawn Marie Martin, 424 W. Liberty St., Rome, Chapter 7.

John S. Palmano, 9445 Jaclyn Ave., Sauquoit, Chapter 7.

Francis S. Ziobro Jr., 11 Oakdale Circle, Whitesboro, Chapter 7.

Frank Macri, 9432 Maynard Drive, Marcy, Chapter 7.

Gloria L. Ingham, 6421 Elmer Hill Road, Rome, Chapter 7.

Clifford G. and Valerie D. Hadden, 927 Rt. 29A, Salisbury Center, Chapter 7.

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dead and voting

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## FOCUS - 1 of 93 DOCUMENTS

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May 30, 2005 Monday

**SECTION:** NATIONAL; Pg. 2A

**LENGTH:** 1011 words

**HEADLINE:** Gubernatorial election trial highlights

**BODY:**

The first week of trial has concluded in Republican Dino Rossi's court battle to set aside Democrat Christine Gregoire's Nov. 2 victory in the governor's race. Gregoire won by a scant 129 votes amid many voting irregularities and errors, but the question is whether there is sufficient basis to reverse or nullify the election under state law.

**"SINISTER FRAUD:"** Republican attorney Dale Foreman alleged in opening statements Monday that "sinister fraud" by high-ranking King County elections officials tipped the election to Gregoire by allowing more illegal votes to be counted in Gregoire-friendly districts. He also alleged ballot-box stuffing and thefts of votes from Rossi.

A fraud finding would have been critical to getting around a 1912 Supreme Court ruling that, in effect, requires the petitioner to show how illegal votes were cast.

**TURNING ON KING COUNTY:** King County Elections Superintendent Bill Huennekens testified Tuesday that he did not realize a mail-ballot report given to the county's vote canvassing board Nov. 17 had false or incorrect data until later. He also acknowledged errors in ballot counting, including more than 300 provisional ballots fed by voters into Accuvote machines at poll sites before the voters' statuses were verified. Regardless, he said the county followed procedures on dealing with possible felon voters.

**MAIL-IN BALLOTS:** King County's mail-ballot supervisor, Nicole Way, testified Wednesday that she did not know the mail-in ballot-report numbers were false when she forwarded them to her boss, Garth Fell; Fell then gave them to Huennekens for the vote certification. This appeared to contradict Way's earlier statements in a deposition that she and Fell put false data on the form because they could not properly account for absentee ballots.

**MORE VOTES THAN VOTERS:** Clark Bensen, a data expert hired by Republicans, testified over Democratic objections Wednesday that Gregoire was favored in five precincts showing more votes than voters credited with voting and that Rossi was disfavored in six precincts showing fewer votes counted than there were voters credited. The implication, according to GOP lawyer Dale Foreman, was that fraud or some other interference led to this "nonrandom" variation in the data, but Democrats say the allegation lacks substance.

**STATISTICAL ANALYSIS:** Judge John Bridges agreed Thursday to let Republicans present evidence from statistical analyses by two experts that purport to show Rossi would have won. The Rossi victory margin would have been somewhere between 60 and 100 votes if illegal or invalid votes — including those cast illegally by felons or on behalf of dead people — were excluded from the totals, according to the analyses.

**JUDGE'S RULING:** Bridges said he was reserving judgment on whether he would ultimately accept into evidence the experts' testimony, which Democrats fought to exclude on grounds it is not a reliable way to learn how voters cast ballots.

Bridges explained his decision by saying that he knows the case is destined for appeal to the state Supreme Court and he wants the justices to have "as large a record as possible, for which they may not thank me actually."

"I have some concerns based on the testimony I've heard," Bridges noted. "But I'm going to reserve ruling on this and ask counsel to go ahead and put on their case."

**EXPERT TESTIMONY:** Republican-hired political science professor Jonathan Katz of the California Institute of

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## Gubernatorial election trial highlights The Olympian (Olympia, Washington)

Technology presented his data analysis later Thursday showing that illegal felon votes in Gregoire-friendly precincts likely followed the pattern of other votes in those districts, resulting in her victory. Another Republican consultant, associate professor Anthony Gill of the University of Washington, offered a similar analysis showing that Rossi would win by 94 votes if all invalid votes identified by the GOP were excluded.

Both cited a federal study showing felon voters tend to vote Democratic.

Democrats countered that neither analysis was based on generally accepted science and that both experts failed to account for the full universe of ballots cast improperly, including those in Eastern Washington counties that favored Rossi.

**"ECOLOGICAL" FALLACY:** Democratic expert Christopher Adolph, an assistant professor at the UW's Center for Statistics and Social Science, said the GOP analyses are invalid and based on a common "ecological" fallacy known to statisticians for 50 years — namely that one could deduce how an individual behaved by knowing something about how a group behaved. He said a better way to learn how individuals voted is to ask them — an impossibility in a case where the identity of many allegedly illegal votes is not known.

To illustrate the fallacy, Adolph used a baseball analogy. If all anyone knew was that the Seattle Mariners' baseball team batted for a .270 average last year, the Republican theory would lead one to infer that Ichiro Suzuki also batted .270 — clearly the wrong answer since Suzuki led the league with a .372 mark and set a record for hits.

**THE TRIAL GOES ON:** Democrats moved to dismiss the Republicans' case Friday, saying there was no direct evidence showing how illegal votes were cast, which the judge had listed in a May 2 pretrial ruling as one of six tests to meet. Democrats also said there is no evidence of fraud, but Republicans insisted there is circumstantial evidence of wrongdoing and that voting errors and possible fraud make it impossible to know whether Gregoire won.

**MAIL-IN BALLOTS:** Democrats began presenting evidence, summoning a half-dozen Republican and Democratic county auditors from areas that favored Rossi to testify. They said their election staffs also counted illegal felon ballots; they counted unverified provisional ballots that had been fed improperly into ballot boxes or counting machines; and they had other voting irregularities, including uncounted ballots that turned up after the election, but in smaller numbers than the 96 found in King County and 64 found in Pierce County.

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FOCUS - 28 of 92 DOCUMENTS

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December 10, 2002, Tuesday , METRO

**SECTION:** METRO / SOUTH TEXAS; Pg. 2B

**LENGTH:** 1095 words

**HEADLINE:** News Roundup

**BODY:** san antonio

Third ballot recount is being considered

The ballot recount from the Nov. 5 election could last until Wednesday because of lingering questions about what to do with vote tallies handled by three election workers who were fired last week.

Bexar County Judge Nelson Wolff is expected to make a statement today about whether elections officials will have to count about seven disputed precincts for a third time.

County Elections Administrator Cliff Borofsky said the precincts handled by the three-person counting team were set aside last week after problems were discovered during a spot check of the ballot boxes.

The team included two Democrats, Mark Garrett and Mike Miklas; and one Republican, Martha Martin.

District Clerk Reagan Greer filed a complaint with Wolff last week asking that the boxes, which include about seven precincts, be recounted because of an allegation that Garrett switched 12 votes from Republican to Democratic candidates.

Garrett vehemently denies tampering with the votes.

No allegations have been made regarding Miklas and Martin. But Martin filed an affidavit with the county judge's office accusing Garrett of calling votes out too rapidly for her to tabulate them properly.

2 bank robbery suspects arrested

Two bank robbery suspects, linked to separate incidents, were arrested within hours of each other Monday.

Stephen Joy, 23, of Chicago, and Michelle Mitchell, 18, of San Antonio, were each being held at the Bexar County Jail late Monday, and were waiting for their bonds to be set.

Joy was charged with robbery. Mitchell was charged with attempted robbery.

According to the FBI, Joy entered the Compass Bank at 7575 Wurzbach Parkway at 10:15 a.m. and handed a teller a demand note. He fled in a late model Chevrolet Caprice, which was found abandoned a short time later, the FBI said. Joy was arrested after San Antonio police traced the vehicle to him, the FBI said.

Two hours after the robbery at the Compass Bank, authorities said Mitchell entered the Sterling Bank at 2700 N.E. Loop 410 and handed a teller a demand note. She was arrested by a security guard at the counter, the FBI said.

In both incidences, no weapons were used.

Man arrested in postal robberies

U.S. Postal inspectors on Friday arrested a 20-year-old man, alleging he robbed the Serna Post Office twice in a week.

Shortly after 3 p.m. on Nov. 29, a man robbed two clerks at gunpoint and fled.

029857



Postal inspectors were working with San Antonio police, who had been investigating several armed robberies on Austin Highway, when the same post office was robbed again on Dec. 6.

At about 3:30 p.m., the robber fled the post office with stolen money and carjacked an elderly woman in the parking lot.

Authorities on Monday said David Aundra Straughn was charged with robbery and carjacking.

Sickly puppies found in pickup

Three sickly chow-mix puppies that were found in the back of a pickup by students at Northwest Vista College have been turned over to the Humane Society for treatment.

The owner of the vehicle turned the bleeding and weak puppies over to Alamo Community College District police, who in turn took them to the Humane Society/SPCA of Bexar County for quarantine.

The puppies are being treated for mange and secondary illnesses, including eye and bacterial skin infections.

ACCD is considering filing criminal charges against the dogs' owner.

The Humane Society will take care of the puppies until they recover. For more information, call (210) 226-7461.

texas

Collision kills teen in New Braunfels

NEW BRAUNFELS - A Canyon High School student was killed late Sunday in a car wreck that also hospitalized a teenager from Seguin.

Gabriel Villalobos, 17, was declared dead at the scene of the accident. Amber Lane, 17, of Seguin, was taken to Brooke Army Medical Center where she was in critical condition, but improving.

Villalobos was driving a 1994 Kia with Lane as a passenger. His car was struck by a 2000 Chevrolet pickup as Villalobos turned left off Kuehler Avenue on Business 35 North at about 8:10 p.m. Sunday, officials said.

The driver of the pickup was treated and released from McKenna Memorial Hospital.

LaSalle residents sue over prison

Claiming that LaSalle County leaders have acted secretly and without giving proper legal notice to the public, a group of Encinal residents sued Monday to block construction of a new federal detention center there.

The suit, filed against LaSalle County Judge Jimmy Patterson, the county commissioners and the LaSalle County Public Facilities Corp., comes more than a month after the corporation sold \$22 million in high-interest bonds and paid out the proceeds for the project.

"This suit is about the process. It's about violations of the Texas Open Meetings Act," said Donna Lednický of Encinal, one of three named plaintiffs.

Supporters say the detention center will bring 150 badly needed jobs to LaSalle County, and provide a boost to the local economy.

Student imposter is sentenced

HOUSTON - Writing a letter of apology to Rice University and paying back \$107.99 for food he ate in the school's cafeteria are among the punishments a man who posed as a student received Monday.

County Court at Law Judge Jim Anderson sentenced Rodrigo Fernando Montano, 24, to 18 months probation for passing himself off as a Rice student and practicing with the track team.

Montano was charged with theft for signing vouchers in the school's cafeteria to eat lunch.

Montano also must perform 40 hours of community service as part of his sentence.

Man arrested after strip club rampage

WICHITA FALLS - A man upset that his daughter was working at a strip club was arrested after allegedly going on a

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rampage in the building, destroying furniture and carrying what appeared to be a pipe bomb, authorities said.

Lee Wayne Lawrence, 41, was in survival gear when taken into custody unharmed at Maximus after police persuaded him to surrender Saturday night, authorities said.

He was charged with aggravated assault and was being held Monday on \$500,000 bond, a jail spokesman said.

Lawrence damaged two 7-foot bubble lamps and a leopard-skin chair and stabbed three table tops with a knife, police said.

Authorities said they were analyzing whether another device he carried was a bomb.

From staff reports

**GRAPHIC:** Photo: RALPH BARRERA/ASSOCIATED PRESS : **EMERGENCY:** Firefighters help Star Flight rescue personnel load a crash victim for transport to the hospital after a multicar collision on Interstate 35 in Austin. The wreck happened Monday afternoon.

**LOAD-DATE:** December 11, 2002

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ballot box and theft

Focus:  
vote and criminal

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## FOCUS - 6 of 169 DOCUMENTS

Copyright 2005 The News Tribune  
The News Tribune (Tacoma, Washington)

May 24, 2005, Tuesday

**SECTION:** SOUTH SOUND; Pg. B06

**LENGTH:** 437 words

**HEADLINE:** GOP must back up claim of election fraud; Dino Rossi's attorney claims the governor's election was stolen - a charge that requires evidence of criminality, not just incompetence.

**BODY:**

Republicans have flung the political "F word" - fraud - at the King County ballot count that made Christine Gregoire governor. Washingtonians will soon find out if the Republicans have the evidence to make it stick.

Until Dino Rossi's challenge of Gregoire's election challenge went to trial Monday, his supporters had largely focused on mistakes made in heavily Democratic King County, either legal ballots that didn't get counted or illegal ballots cast by felons that did.

The Republicans can cite many hundreds of wrongly excluded or included votes - more than enough, in theory, to erase the paper-thin 129-vote lead that put Gregoire into the governor's mansion.

But the trial judge, John Bridges of Chelan County Superior Court, has made it clear that a case built on election mistakes will face a tough test in his courtroom. Merely establishing a large number of mistakes won't do; he wants Rossi's team to demonstrate that the mistakes actually cost him the election.

That will be hard to do without somehow figuring out how many of those secret ballots were cast for him or Gregoire.

It's easier, though, to overturn an election if fraud can be established. On Monday, Rossi's legal team set out to do just that. In King County, GOP attorney Dale Foreman charged, ballot boxes had been stuffed in Gregoire's strongest precincts, while ballots had disappeared in two of Rossi's best precincts.

"This election was stolen from the legal voters of this state by a bizarre combination of illegal voters and bungling bureaucrats," he argued.

And: "The King County data shows partisan bias and not random error."

The Republicans will indeed have a case for fraud if they can show that the election irregularities in King County clearly and consistently favored Gregoire. In fact, that would be the biggest political scandal this state has seen in decades.

But if the evidence Foreman offers consists of "illegal voters" and "bungling bureaucrats," what he's got is the same old collection of felons and King County blunders Washingtonians have been groaning about for months. While incompetent ballot-handling could easily change the outcome of an election as close as this, it can't "steal" the election. For election fraud, you need more: criminal intent, connivance and actual vote-tampering.

Maybe Foreman has substantial circumstantial evidence to back up this charge. He's certainly piqued our interest. But having alleged fraud, he'd better show the court something more than election glitches no one would have noticed had the winning margin been merely close, not microscopic.

**LOAD-DATE:** May 25, 2005

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Number of Lines: 70  
Job Number: 1842:73876303

Client ID/Project Name:

Note:

Research Information:

Combined Source Set 5  
ballot box and theft

Focus:  
vote and felon and date geq (01/01/2000)

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FOCUS - 28 of 28 DOCUMENTS

Copyright 2001 Gannett Company, Inc.  
USA TODAY

March 12, 2001, Monday, FINAL EDITION

**SECTION:** NEWS; Pg. 13A

**LENGTH:** 1243 words

**HEADLINE:** Rights panel suspects bias in Florida vote debacle

**BYLINE:** DeWayne Wickham

**BODY:**

The U.S. Commission on Civil Rights' preliminary report on Florida's badly flawed presidential voting was short and to the point. The sworn testimony of more than 100 witnesses at the panel's two fact-finding hearings and weeks of probing by commission investigators were summed up in a single sentence of the four-page statement the body issued last week.

At this phase of its investigation it appears "that the evidence may ultimately support findings of prohibited discrimination," the commission concluded. Not surprisingly, the reaction from Florida Gov. Jeb Bush, on whose desk the buck for the election mess stops, quickly dismissed the panel's finding.

In a statement released by his office, Bush said he has "yet to be presented with any evidence of intentional discrimination" in the voting that took place in his state's 67 counties.

The good news buried beneath this pile of blame and buck dodging is that we're in the home stretch of the search for answers to the gnawing question of what went wrong in Florida. The commission's final report, which is expected to be released this summer, likely will bring to an end the last of the federal and state investigations spawned by widespread accusations of voting irregularities and disenfranchisement in Florida during the presidential election.

Answer still far off

The bad news is that it doesn't look as if we're any closer to an answer that will dispel the widely held belief that it took an act of grand larceny to foist George W. Bush into the White House, or rebuff the counter that those who level this charge are a bunch of world-class sore losers.

The arguments over whether Bush or Al Gore won Florida — a victory that would have given either candidate enough Electoral College votes to be president — have only become more heated recently as media reports on the results of unofficial recounts of contested ballots produce conflicting conclusions of what might have resulted from a more complete tally of ballots cast in the Sunshine State.

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Last month, *The Miami Herald* and USA TODAY announced that an analysis of undervotes in Miami-Dade County revealed that had Gore gotten the hand recount of votes in that county, Bush still would have been declared the winner in Florida. This report left Republicans giddy and Democrats questioning the process.

On Saturday, the roles reversed when *The Palm Beach Post* reported that its review of uncounted ballots in Palm Beach County showed that Gore would have picked up enough votes to overtake Bush's slim victory margin in Florida, if every ballot with a hanging chad, pinhole or dimple in that county had been counted.

#### Panel looks to future

Wisely, the Civil Rights Commission is focusing on the future, not the past. "In the final analysis, new recounts of old ballots are an academic exercise," the panel said in its preliminary report, which was adopted by a 6-to-2 vote. "Voting is the language of our democracy and regrettably, when it mattered most, real people lost real opportunities to speak truth to power in the ballot box."

The commission believes that Florida officials may have consciously or unconsciously brought about acts of illegal voter discrimination through its use of a database of disqualified voters. The list was supposed to be used to keep convicted felons from voting and to block votes cast by people registered in more than one county or in the name of a deceased person.

A spokesman for ChoicePoint — the company that compiled the list — said Florida officials directed it to include all possible combinations of names that might help election officials ferret out ineligible voters. That list, the commission said, kept hundreds of eligible people from voting in the presidential election.

Preventing a repeat of this grievous error and ratcheting up the pressure on Florida's reluctant legislature to appropriate money that counties with aging, faulty voting machines can use to modernize their election system are the best things that can come out of the commission's ongoing inquiry.

Getting these things done won't settle the nettlesome question of whether last year's presidential election was won or stolen, but it will go a long way toward ensuring that Florida won't be the epicenter of another election debacle.

*DeWayne Wickham writes weekly for USA TODAY.*

**LOAD-DATE:** March 12, 2001

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Fraud  
Johnson

TN



Election panel debates 'fraud'

By Craig Boerner, cboerner@nashvillecitypaper.com  
January 12, 2005

The Davidson County Election Commission is debating whether to forward potential cases of perjury or election fraud during the November presidential election to District Attorney General Torry Johnson's office.

Commissioner Lynn Greer wants board members to join him in sending a strong message that there is a legal way to vote.

Greer said 31 provisional voters, for example, are still listed as felons who have not had their voting rights restored.

"If we have some people who have broken the law then we ought to enforce the law," he said.

Other board members aren't as concerned because the votes in question were caught and didn't count.

"The provisional counting board caught the mistake. It's not like the vote became part of the record," Commissioner A.J. Starling said.

"They didn't get away with it. The system works. I don't know if we need to go any further if the system works."

Commission staff members are working to confirm felon status and also to determine which persons were sent a notice of being purged from the voting rolls.

The staff is also investigating if previously registered felons declared their conviction on the application completed to cast a provisional ballot.

Greer's six-part motion to be discussed at the March board meeting doesn't stop at felons; it also includes college students and poll workers.

One request is to "cease to hire" officers of election at precincts that allowed more than five provisional ballots from residents whose address was outside that officer's precinct.

"If we have ineffective poll officials then we don't need to use them again," Greer said. "The truth is these people were trained. They went into breakout sessions learning how to do this provisional voting and they had plenty of chances to ask questions.

By allowing 158 voters to vote at the wrong precinct, poll officials essentially ensured that the person's vote would not count, board members said.

"To turn around and say that, because those officers allowed them to vote, we don't need them anymore is ridiculous," Starling said. "... We are already having enough problems getting people to work at these polls."

Staff is also contacting provisional voters using a university/college campus P.O. box as their address to request they prove residence in Davidson County because a person does not gain residence solely by being a student.

This motion would affect 142 provisional voters from Tennessee State University and 25 Vanderbilt University students.

"What that would do, in my opinion, is frighten people from coming to vote in the first place," Starling said. "If you are prosecuting folks, I'm not going to take a chance if I'm not sure. That defeats the purpose of the provisional ballots."

Other cases include 34 provisional voters who were registered in another jurisdiction. If they voted

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in two jurisdictions then they could be convicted of election fraud.

Three voters were denied at early voting because they didn't live in Davidson County but came back and voted on election day.

Greer also wants to know how many of the 693 provisional voters denied for being "not timely registered" actually submitted a voter registration form prior to the election.

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Original URL: <http://www.jsonline.com/news/metro/may05/324933.asp>

WE

# Inquiry finds evidence of fraud in election

## Cast ballots outnumber voters by 4,609

By GREG J. BOROWSKI  
[gborowski@journalsentinel.com](mailto:gborowski@journalsentinel.com)

Posted: May 10, 2005

Investigators said Tuesday they found clear evidence of fraud in the Nov. 2 election in Milwaukee, including more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses or voted in the name of a dead person.

Officials said charges will be filed in coming weeks, as individual cases are reviewed and more evidence is gathered.

Nonetheless, it is likely that many - perhaps most - of those who committed fraud won't face prosecution because city records are so sloppy that it will be difficult to establish cases that will stand up in court.

And even now, three months after the investigation, officials have not been able to close a gap of 7,000 votes, with more ballots cast than voters listed. Officials said the gap remains at 4,609.

U.S. Attorney Steve Biskupic likened it to trying to prove "a bank embezzlement if the bank cannot tell how much money was there in the first place."

Biskupic announced the preliminary findings at a news conference, along with Milwaukee County District Attorney E. Michael McCann, who is also overseeing the joint inquiry.

Tuesday's announcement comes after a Journal Sentinel investigation that found widespread problems with the election in the city, including that the election totals themselves were not double-checked by city and county panels charged with doing so.

Some of the problems identified by the newspaper, such as spotty compliance with procedures to verify same-day registrants, are broader and are the subject of a statewide audit approved by lawmakers.

Tuesday's announcement could breathe new life into the Republican-backed photo ID debate, which did not survive a veto from Democratic Gov. Jim Doyle and might instead eventually go to voters as a proposed constitutional amendment.

A photo ID requirement might have caught some of the problems highlighted in Tuesday's preliminary report. It notes cases of people voting in the name of a dead person or as someone else. Investigators located some people listed as voting who said they did not vote.

In other cases, according to Tuesday's report, people "registered and voted with identities and addresses that cannot in any way be linked to a real person."

Officials did not identify how many fit each category.

Investigators have focused only on the City of Milwaukee in reviewing duplicate-voting offenses. Officials said Tuesday, though, that they would expand the review of felons voting illegally to Milwaukee suburbs.

The newspaper found at least 278 felons who voted statewide, though only a partial review could be completed because of a state law that bars public access to birthdates of voters.

### Election Investigation



Photo/Karen Sherlock

U.S. Attorney Steven M. Biskupic (left), with Milwaukee County District Attorney E. Michael McCann, delivers the preliminary findings of a task force examining possible election fraud at the Federal Courthouse on Tuesday

### Preliminary Findings

More than 200 felons voted illegally, while still on probation or parole. Although the cases will be hard to prosecute, investigators are now looking at Milwaukee suburbs for similar problems.

More than 100 people voted twice or used false addresses, fake names or voted as a dead person. Charges will be filed against some of these people.

4,609 more ballots were cast than voters listed.

Investigators have

## Tracking illegal votes

The fraud investigation has focused on the more than 70,000 people who registered to vote on election day, not the other 200,000-plus voters. That is because registration cards provide a paper trail, which officials said would be stronger in court than computerized records.

It is unclear what identification these 100-plus people provided at the polls to register. State law allows utility bills and leases to be used or for one voter to vouch for another.

Biskupic, appointed by a Republican, and McCann, a Democrat, said they had pledged to avoid partisanship in the matter and avoided questions relating to reforms and proposals.

The announcement, though, prompted renewed calls for photo ID from Republicans, while Doyle pushed again for his set of reforms, which he said would do more to tackle specific problems.

For instance, investigators found "deputy registrars" working for registration drives had submitted at least 65 fake names, though no one apparently voted from the addresses. Doyle's plan would prohibit offering financial incentives, such as paying by the signature, in such drives.

In Madison, Doyle said a photo ID requirement is unnecessary. He urged prosecution of any offenders.

"I don't think many people, if they know there are real consequences for voting twice, and that there have been prosecutions for voting twice, are going to do it because the risk of being caught and the penalty far outweighs the advantage of casting one extra vote," Doyle said.

In response to the findings, Sen. Joe Leibham (R-Sheboygan) said as early as next month he would advance a bill similar to the one vetoed by Doyle. It also could be part of the recommendations from a Legislative Council task force that has been meeting on reforms.

While Doyle has argued the measure would make Wisconsin one of the strictest states in the nation, very few other states allow same-day registration.

Assembly Speaker John Gard (R-Peshtigo) said if Doyle again vetoes the requirement, he would move to make it part of the state constitution, a two-year process that requires a statewide referendum but does not require the approval of the governor.

"The next presidential election in Wisconsin, I guarantee you'll need a photo ID to vote," said Gard, who is running for the U.S. House. "I'll get this done if it is the last thing I do around here."

U.S. Rep. Mark Green, a Green Bay Republican who has introduced a national photo ID requirement, said: "People are having their faith in the election system shaken. This news will make it much, much worse."

Green is running for governor, as is Milwaukee County Executive Scott Walker, who also backs a photo ID requirement.

"Clearly, there is proof that fraud took place in the November 2 election," Walker said.

Milwaukee Mayor Tom Barrett attended the news conference, an unusual occurrence for an announcement by prosecutors.

From the start, Barrett said he welcomed the inquiry but also noted at several points in recent months that he had seen no hard evidence of fraud in the system.

He acknowledged Tuesday the findings pointed to fraud and said again "any individual who committed fraud (should) be prosecuted."

Asked if a photo ID requirement would have made a difference, he said it would not have prevented felons from voting and would have had little impact on other problems.

Biskupic said there was no indication of a widespread conspiracy to commit voter fraud, or of any knowledge or involvement by poll workers or any other city officials.

not been able to locate about 100 same-day registration cards.

### By The Numbers

**1,000**  
Minimum of hours logged by investigators from the FBI and Milwaukee Police Department reviewing the 70,000 same-day registration cards. This was required because of sloppy record-keeping by the city.

**1,300**  
Cards that could not be processed because of missing names, addresses and other information.



### Photo ID Debate

**Should the state adopt a photo ID requirement for voting?**


- Yes  
 No

**VOTE**

### Related Coverage

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-  [Archive: Previous coverage of the investigation into Milwaukee's Nov. 2, 2004 election](#)

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The city's record-keeping problems meant investigators from the FBI and Milwaukee Police Department have logged more than 1,000 hours reviewing the 70,000 same-day registration cards, including 1,300 that could not be processed because of missing names, addresses and other information.

Indeed, about 100 cards described as "of interest to investigators" cannot be located, officials said. And within the past few weeks, police found a previously lost box of the cards at the Election Commission offices.

Biskupic and McCann said they remain troubled that three months after the investigation began that city officials have been unable to account for a gap of about 4,600 votes, with more ballots counted than people listed as voting.

That reflects a new assessment of the 7,000-vote gap first identified by the Journal Sentinel. Although city election officials initially blamed postelection data entry for the flaws, the newspaper found gaps existed at dozens of wards, with more votes counted than people tallied in log books.

The gap has been narrowed to 4,600 by a closer review of election day logs and other records, which authorities placed off-limits to the newspaper during the investigation.

McCann said: "I will not be satisfied if we cannot uncover that - what the explanation is, or a reasonable explanation."

In all, about 277,000 people in Milwaukee voted in the election. Thus, the cases identified in the investigation constitute a small portion of the total vote.

The findings, however, carry extra significance in a state that had an 11,000-vote margin in the presidential contest, one of the closest in the nation.

Democrat John Kerry topped President Bush in Wisconsin, mainly because of Kerry's margin in Milwaukee and Madison.

Had a larger state, such as Ohio, gone the other way, it could have led to a Florida-style recount here that would have turned on many of the issues that instead were left for the newspaper to uncover in its extensive investigation.

The federal-local investigation was launched Jan. 26, a day after the Journal Sentinel reported that some 1,200 votes in the November election came from invalid addresses.

Among other findings, some 1,300 same-day registration cards were processed by poll workers who allowed people to vote even though the cards were incomplete. Some 548 had no address listed and 48 gave no name - yet the person was allowed to vote. Another 141 listed addresses outside the city.

The newspaper was denied access to those cards, on the recommendation of the city attorney's office, citing the inquiry.

## Felons voted

Reviewing information it had access to, including a computerized list of people recorded as voting, the newspaper identified at least 278 felons who illegally voted statewide, though the vast majority came from within the city.

The real number is likely far higher because the newspaper was able to review only about 38% of the 2.98 million people who voted in the state because of the law that bars access to birth dates. The newspaper was able to link various databases and compare them to a state list of felons on probation or parole at the time of the election.

In response to the newspaper's reports, Doyle and many Republican lawmakers said that rule should be rescinded.

In Wisconsin, only felons who have completed probation or parole are allowed to vote.

Biskupic and McCann said these cases can be hard to prosecute, since it must be established that the felon knew he or she was not allowed to vote and voted anyway.

Thus it is unclear how many of the 200 felons investigators had identified will ultimately be charged.

The newspaper also identified numerous cases in Milwaukee where the same person appears to have voted twice, though that analysis was hampered by major computer problems at the city.

Those problems, which city officials labeled a "glitch," meant hundreds upon hundreds of cases where people are incorrectly listed as voting twice. These are in addition to cases of double voting identified by investigators.

The investigators have been focusing on 100-plus cases in this area. The cases take on many forms.

For instance, non-residents used non-existent city addresses to vote in Milwaukee. Officials are checking to see if they also voted elsewhere, such as from their actual address.

Officials indicated some of the fraud cases could be handled at the federal level because the election involved federal candidates, while other cases could involve state charges.

McCann and Biskupic asked anyone with information on possible fraud call the election task force at (414) 935-7802.

In March, Lisa Artison, a Barrett appointee, resigned as executive director of the Election Commission. She had been under fire for her handling of the election.

Sharon Robinson, head of the Department of Administration, has been overseeing the office and is chairing a city task force reviewing the election. Its report could be issued this month.

*Patrick Marley of the Journal Sentinel staff contributed to this report.*

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WI

## 82 felons voted in Nov. 2 election

### Public records law hinders analysis; more illegal ballots likely cast in presidential race

By GREG J. BOROWSKI  
[gborowski@journalsentinel.com](mailto:gborowski@journalsentinel.com)

Posted: March 17, 2005

At least 82 felons voted illegally in the presidential election Nov. 2 in Milwaukee, though the total is likely far higher, a new computer analysis by the Journal Sentinel has found.

Indeed, there are more than 600 potential matches between felons on probation and parole and names and middle initials of people who voted in the city. But a full analysis could not be completed by the newspaper because of a 2003 state law that bars access to birth dates of voters.

The newspaper, though, was able to do a partial analysis by combining several computer databases to capture birth dates for about 39% of those who voted in the November election.

That showed at least 82 votes by felons, who are not allowed to vote until their probation or parole has been completed.

Illegal votes by felons are part of an investigation into possible voter fraud in the city.

U.S. Attorney Steven Biskupic and Milwaukee County District Attorney E. Michael McCann launched the investigation after the Journal Sentinel revealed major problems. Those included 1,200 votes from invalid addresses; 7,000 more ballots cast than people later recorded as voting by the city; and 1,300 same-day registration cards that could not be processed because of missing information.

The review of felons underscores how the lack of access to birth dates limits the public's ability to identify who has voted.

It also provides clear evidence of fraudulent voters in the November election, in which Democrat John Kerry topped President Bush by about 11,000 votes in Wisconsin.

"Anybody found to have voted illegally should be penalized," said Sharon Robinson, acting head of the city Election Commission, when told Thursday of the newspaper's findings.

She said the office's procedure is to delete names of felons from the registration rolls when made aware of convictions. It is unclear, though, how effective this has been or how many remain on the list.

In addition, same-day registration allows anyone to present ID and vote. That makes it difficult, if not impossible, for poll workers to identify felons who should not vote.

"Election signs and materials spell out the penalties," said Robinson, noting voters are expected to comply with laws.

Robinson was named to head a team of city managers helping run the office after the resignation of Lisa Artison on March 1.

Four years ago, the newspaper found that 361 felons voted illegally. Three were charged by McCann, but those charges were dropped when prosecutors couldn't establish that the felons knew they were ineligible to vote.


Felons who vote commit another felony, punishable by up to four years in prison and a \$10,000 fine.

Biskupic declined to comment Thursday on the newspaper's findings, speaking on behalf of the agencies involved, which include the FBI and Milwaukee Police Department. The investigation was launched Jan. 26.

<http://www.jsonline.com/news/metro/mar05/310603.asp?format=print>

Milwaukee  
Elections

Archived Coverage

 Archive:  
Previous coverage  
of the investigation  
into Milwaukee's  
Nov. 2, 2004  
election

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Investigators have access to the full birth date information that is off-limits to reporters and the general public. They would be able to make the same comparison the newspaper did, matching the names of voters to felons who remain ineligible to vote.

Additional legwork would then be needed to establish legal cases against any felons. For instance, investigators may have to show the felon knew he or she was ineligible to vote and did so anyway.

Several felons listed as voting who were reached by the Journal Sentinel hung up when asked whether they voted.

"I'm not interested in this right now," said one, after denying he had voted in the election.

### Didn't know they shouldn't

Ronald Gay, 42, who voted from an address in the 4300 block of N. 36th St., could not be reached, but a woman who identified herself as his wife said Gay had definitely voted.

"He voted the same night I did," said the woman, who would give her name only as "Mrs. Gay." Later she asked: "Will he get in trouble for that?"

The woman said she and Ronald Gay are separated and that Gay now lives out of state. He could not be reached for comment.

"I don't think he was aware" he shouldn't vote, the woman said. "If he was aware of it, I would have told him not to."

Although the newspaper has identified 82 felons who voted, it could not determine the actual number.

Because the 2003 change in state law restricted public access to birth date information, as well as driver's license and Social Security numbers, only election workers are allowed to see such information, as a guard against identity theft.

Arguing that the change went too far, state Rep. Mark Gundrum (R-New Berlin) said this week he would draft a bill to reinstate public access to birth dates, a critical means of identifying specific voters.

Gundrum called on investigators to take a hard line with any violation they find.

"It will immediately help clamp down on the abuse of the system," Gundrum said. "There has got to be some oversight on the system to make sure there is integrity to the system."

In Milwaukee, the situation has been compounded by the city's unwillingness to confirm any of the 600 potential matches the newspaper identified between felons and voters.

Officials have cited the ongoing investigation as a reason for withholding election material.

In an attempt to get around the roadblock, the newspaper combined information from several computer databases. This provided an accurate view of felons who voted but also a partial one - the newspaper could link birth dates with only about 39% of the 277,000 people who voted Nov. 2.

To complete its partial analysis, the newspaper began with the city's own computerized list of everyone recorded as having voted. It then used voter ID numbers - a six-digit code used by the city to track voters - to match the 2004 list against a separate computer database obtained in 2000.

That list included anyone registered in the city at the time and their birth dates. The match allowed the newspaper to capture birth date information for 107,616 of those who voted in November.

That list was then matched against a computer database from the state Department of Corrections that listed all felons on probation or parole at the time of the election, along with their birth dates.

There were 82 matches.

The actual number, though, is likely much higher.

First, the list could not be checked against 61% of those who voted. Second, the 7,000-vote gap - between votes cast and those recorded as

voting - means thousands of voters are not even on the city's computer list.

In addition, the newspaper in earlier reviews found hundreds of cases in which voter names were incorrectly listed twice in the computer system.

### Voter gap could be larger

That means the 7,000-vote gap may actually be larger.

Likewise, the 1,300 same-day registration cards the city could not process are not in the database. Many of those were missing names or addresses.

Indeed, flawed recordkeeping by the city may mean that some felons who voted are not in the computer records and the reverse - that some who didn't vote are listed as voting.

Annette Deans, who worked at the polls Nov. 2, said she is perplexed as to why her husband, Arthur Deans, 48, is listed as having voted.

"I know he can't vote," said Annette Deans. She added that her husband, convicted of a drug-related offense, did not vote, but that she did.

While the city's computerized list of voters show Arthur Deans as voting, they do not list Annette Deans as voting.

"There were a lot of flaws (at the polls) that day," said Annette Deans. "We didn't have any room to breathe."

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029676



## Norfolk pastor sentenced for casting illegal ballot

By MICHELLE WASHINGTON, The Virginian-Pilot

© January 14, 2004

Last updated: 11:17 PM

VA

NORFOLK — On a November day more than two years ago, Chester Moody made his vote count.

The only problem was that it shouldn't have.

A 1986 felony conviction for larceny by check in Chesapeake cost Moody his voting rights. He obtained a voter identification card in 1999, despite never having his rights restored. On Nov. 6, 2001, Moody tried to cast a vote in the general election at the Campostella precinct.

Election officials told him he could not legally vote because of the conviction, but they gave him a conditional ballot and said they would hold it until his voter qualifications could be investigated.

Instead, according to prosecutors, Moody "waited until the voting officer was momentarily distracted, rushed to the ballot box, and slid his ballot in."

Moody entered an Alford plea Tuesday in Norfolk Circuit Court to a misdemeanor charge of illegal voting, a crime that is rarely prosecuted. The plea means he does not admit guilt but acknowledges that prosecutors have enough evidence to convict him.

Judge Jerome James sentenced him to a year in jail but suspended the time on the condition that he remain on good behavior for two years. As part of his plea agreement, he also must "refrain from attempting to vote unless and until he is legally able to do so."

Outside the courtroom, Moody said the court process "coerced" his plea.

"The case is over 2 years old," he said. "The voter identification card I had received was arbitrarily and capriciously ruled issued erroneously."

Moody, 68, wore a black parson's suit with a white collar, a crucifix dangling from his neck. He is an associate pastor at the Garden of Prayer Temple, Church of God in Christ, on Church Street.

Moody said he sought restoration of his voting rights. He said prosecutors manufactured the charge in retaliation because he served as a spiritual adviser to someone who filed a lawsuit against the city of Chesapeake.

And he complained that prosecutors repeatedly delayed his case to force him to plead guilty.

"They sat on it and used it in a timely fashion," he said.

Court and state voter records tell a different story.

Moody's court file brims with requests from prosecutor Marcia Ziegler to have his bond revoked because he refused to cooperate with the court's pretrial services unit.

He never reported to the officers after being assigned to the service in June.

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Court documents show that Moody also failed to stay in touch with his court-appointed attorneys. Lawyer Charles Jenkins asked to withdraw as counsel from the case because Moody never contacted him between July and October.

Another lawyer, Mike Kmetz, asked to withdraw because Moody refused to cooperate and made demands that Kmetz file a motion to transfer the case to federal court.

Two other lawyers withdrew because of conflicts or other causes. Cheryl Footman Banks, who represented Moody on Tuesday, was at least the fifth lawyer to handle his case.

On another occasion, Moody's case was delayed because he asked for a jury trial. And in February, his case was delayed because "he was confused as to the trial date and failed to appear," according to the documents.

A judge issued an order for his arrest when he failed to appear in court in July.

John Merkel, Norfolk's deputy registrar, said Moody registered to vote in the spring of 1999, before the city had computerized databases to check whether a person was eligible to enroll. The city got that system in the fall of 1999, Merkel said.

"Now if you fill out a card, someone goes to a computer, types in your name and Social Security number and does a match," he said. For people on felony conviction lists, he said "flashing lights go off and you won't be allowed to register."

Even so, he said, the registration form asks applicants about felony convictions.

When the board caught the mistake that fall, it sent Moody a letter saying his name had been removed from the voter rolls. That made his card invalid.

When Moody cast his vote anyway, said Commonwealth's Attorney John R. Doyle III, his ballot counted when it should not have. Election officials had no way to tell which ballot was Moody's or how he voted, and his vote could not be deducted from the total.

"I'm sure they freaked," Doyle said. Bernie Henderson, deputy secretary of the commonwealth, said Moody's voting rights were never restored.

Doyle said his office has never prosecuted a similar case, and he never saw one during the five years he served on the electoral board.

If prosecutors didn't enforce it, he said, all kinds of people could sneak into polling places and vote illegally.

"You have to have zero tolerance," he said.

*Reach Michelle Washington at 446-2287 or [michelle.washington@pilotonline.com](mailto:michelle.washington@pilotonline.com)*

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Los Angeles Times  
**latimes.com.**

<http://www.latimes.com/news/local/la-000091641nov16.story>

LOS ANGELES

## Review of Election Starts in Confusion

**Court: About 1,500 ballots are reported missing in the legal dispute over Compton's June 5 mayoral contest.**

By JOHN L. MITCHELL  
TIMES STAFF WRITER

November 16 2001

The first day of a court-ordered review of Compton's contested June 5 municipal election got off to shaky start Thursday when 1,500 unused ballots were reported missing.

The Superior Court judge hearing former Mayor Omar Bradley's lawsuit alleging voting fraud dispatched Los Angeles County sheriff's deputies to retrieve the ballots. City officials claimed they were left at Compton City Hall by error and would be presented in court today.

However, Bradley said the confusion over the missing ballots strengthens his claims that he was cheated out of the election. "This is unheard of, unheard of," Bradley said in the courtroom Thursday afternoon.

After the court session finished, Bradley's attorney, Bradley Hertz, said: "In the least, the city clerk has a disorganized office and at most, perhaps, a cesspool of illegalities."

Bruce Gridley, the attorney for the city, denied any wrongdoing by the city clerk and said the mistake was made earlier this month when sheriff's deputies picked up boxes of ballots stored from a different election.

The ballot review began Thursday with an election expert inspecting the votes in court and tallying the overall totals, not conducting a candidate-by-candidate recount. He used an automatic counting machine, which can handle more than 1,000 cards a minute and was set up on a table near the jury box.

Scott D. Martin, the election specialist whose company supplied the Compton ballots, inspected the initial batch for texture, printing and color. He pronounced them legitimate.

"They all look like ours," said Martin, of the Anaheim-based firm Martin & Chapman Co.

Once all the ballots are accounted for, court officials estimated, it will take about three days to process the 10,600 cast in June and the additional 20,000 ballots printed for that election but reportedly not used.

The review was ordered by Judge Judith Chirlin, who is hearing the lawsuit brought by Bradley and two City Council candidates on his slate against current Mayor Eric Perrodin, City Clerk Charles Davis and the city of Compton. Bradley lost the mayor's office by 281 votes to Perrodin, a Los Angeles County deputy district attorney. Bradley's side accuses the Perrodin camp of such fraud as stuffing boxes with counterfeit ballots and

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having noncitizens vote, allegations Perrodin and Davis deny.

Martin on Thursday said the first bunch of absentee ballots were uniform except that they varied in color in four shades ranging from lavender to white.

Bradley's attorney Hertz, who had offered to give Martin a magnifying glass and flashlight, wondered why the ballots could vary so much in color. "We are intrigued by that," Hertz said.

But Martin said the differences were not significant and resulted from being printed in different batches.

Both sides planned to have experts on hand Thursday. When Bradley's specialist was unable to attend the court session, his side accepted the defense experts.

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Los Angeles Times  
**latimes.com**



<http://www.latimes.com/news/local/la-000091217nov15.story>

CA

LOS ANGELES

## Judge Orders Inspection of Ballots in Compton

**Court: The ruling involving 10,600 votes is a victory for ex-Mayor Omar Bradley, who lost his reelection attempt and is claiming fraud.**

By JOHN L. MITCHELL  
TIMES STAFF WRITER

November 15 2001

A day after a startling setback in his legal battle to regain his title as Compton's mayor, Omar Bradley scored a victory Wednesday when a Superior Court judge ordered the inspection of 10,600 ballots.

Judge Judith Chirlin said she was motivated to unseal the boxes because it was important to "instill confidence in the people of Compton who will have to accept the results of this [election] process."

The boxes may be opened at 9 a.m. today if the plaintiffs' ballot expert can make it. But attorneys said that it was more likely that the inspection would begin Monday. In his lawsuit, Bradley, who lost the June 5 election by 261 votes to Deputy Dist. Atty. Eric Perrodin, alleges that the voting was marred by counterfeiting and other irregularities.

On Tuesday, a key witness who was expected to testify on Bradley's behalf dealt a blow to the plaintiffs. Compton school board member Basil Kimbrew denied seeing counterfeit ballots, and accused Bradley's attorney of trying to bribe him. Bradley W. Hertz, the former mayor's lawyer, has said Kimbrew committed perjury on the stand.

Brian Pierik, the lawyer representing Compton and Perrodin, argued Wednesday that there was not enough evidence to open the ballot boxes and that Hertz waited too long to make the request.

But, he added, he was confident that no counterfeit ballots would be found.

Pierik questioned Bradley, who took the witness stand for the first time, about his relationship with Kimbrew, considered a longtime adversary of Bradley.

Pierik asked if they were such opponents in Compton, why did Bradley believe Kimbrew when the school board member told him about the fraud at a meeting in September.

"Every dark cloud has a silver lining, even Mr. Kimbrew," Bradley said with a smile. "That can only be proven by what is in the box."

Under rules agreed to by attorneys, the ballots will be inspected by experts from both sides. Though the vote




will not officially be recounted, the total votes cast will be tallied and the ballots will be inspected for authenticity. The count is expected to take two to three days.

Deborah Seiler, who publishes the California Elections Report, will be coming from Sacramento, Hertz said. The defendant's expert will be available Thursday morning.

Bradley and two City Council nominees who ran on his slate, Melanie Andrews and Frank K. Wheaton, are accusing Perrodin, City Clerk Charles Davis and the city of Compton of wholesale election fraud. They say there were irregularities in more than 500 votes, including some in which the signatures didn't match those on the voting rolls.

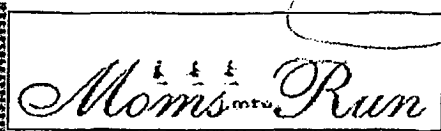
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Local News - Tuesday, February 24, 2004

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## Lott says voting fraud is problem

By Kevin Walters  
American Staff Writer kwalters@hattiesb.gannett.com

Even though both Rep. Mike Lott, R-Hattiesburg, and Secretary of State Eric Clark favor voter identification, a rift between the two over the matter was exacerbated by comments Lott made during a speech Monday.

"Our secretary of state told me face-to-face that apparently we don't have much voting fraud because we don't hear much about it," Lott told about 40 people at the Lake Terrace Convention Center during his Legislative Update speech. "I told him face-to-face we have a lot more rapes going on on our college campuses than we know about because they don't get reported. Just because they're not reported does not mean that it's not happening."

Voter identification would require voters to show proof of who they are before they vote.

As an example of voter fraud, Lott, 47, who is seeking the Republican nomination to challenge Democratic U.S. Rep. Gene Taylor for the 4th District House of Representatives seat, cited a voter list he said was used at a voting precinct in Clinton in the November election that he said had numerous discrepancies such as:

- Eight voters' names in a row, all in alphabetical order. "It was amazing that people came in in alphabetical order to vote," Lott said.
- A man's name was repeated twice in the voter roll - in two different styles of handwriting, Lott reported.
- That same man's wife was also on the roll, Lott said, although the woman had been dead for three years.

Lott said later that he was uncertain if the person who showed him the information - whom he did not identify - had alerted authorities about the fraud.

The Hinds County District Attorney's office did not return a call about this matter.

Clark said later Monday he had no knowledge of the Clinton voter roll problems, but said Lott had misrepresented his side of their conversation about voter identification legislation in Mississippi.

"I'm sorry that Rep. Lott decided he needed to misquote me and be critical,"



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Clark said in a phone interview. "I have the strongest track record of anybody in the state of combating voter fraud."

Lott also said Monday that Mississippi could lose \$40 million in federal funding if legislators do not pass voter I.D. during this session.


But Clark's office said Monday that Mississippi's share of money from the federally funded Help America Vote Act is actually \$34 million and that the federal funding is not endangered. The money would be used to upgrade the state's outdated voting equipment.

Called for clarification about the federal funding, Lott said he and other legislators in the House were misled last year about a deadline existing this year to receive the funding.

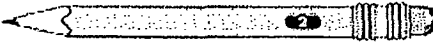
"We were led to believe that this had to be passed, that we were pushing against a deadline and we would not receive the money," Lott said later after he personally called Clark's office for more information. "There seems to be a lot of changing of minds going on in the secretary of state's office."

Clark said he is trying to improve voting rolls by tightening absentee ballot procedures and removing the names of dead people and those in jail.

"However much there is (of voter fraud) is too much," Clark said.

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Originally published Tuesday, February 24, 2004

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# San Bernardino County Computers Scramble Elections

CA

**Glitch: Programmer's error leaves 33 races in doubt. Some counted as last night have won, red-faced officials say.**

By BUCK WARGO  
SPECIAL TO THE TIMES

November 10 2001

ONTARIO -- Computer ballot-counting errors in San Bernardino County this week have thrown 33 races into doubt and may be so serious that those listed as getting the least votes actually might be winners, the registrar of voters said Friday.

A county employee erroneously programmed the computer so that, for instance, it sometimes read the punch-card lists from the bottom up. A hole punched for the last candidate listed in a race, therefore, would have been read as a vote for the first, county spokesman David Wert said.

A recount of all 82 races and 85,000 ballots cast on Tuesday will be completed by next Tuesday, he said. "There are going to be at least a few races in which people who appeared to have won and were the high . . . [vote-getters] were actually the low . . .," Wert said. "Some races are going to be reversed."

Most of the races affected were school boards or community college districts throughout San Bernardino County. Nine were in water districts or special districts. No city races were affected.

"It is going to be a long three days," said Bill Klein, who had appeared to be an upset winner in the Chino Valley Unified School District, ousting one of two longtime incumbents. "It is a case where you are frustrated, shocked and concerned."

In the Ontario-Montclair School District, 20-year incumbent David Van Fleet of Ontario said he was shocked to see the final tally showing that he finished sixth out of seven candidates. He had expected to finish in the top three and win his sixth term.

"Everyone that came up to me afterward said they went out and voted for me," he said. "They asked me how could I lose. I couldn't explain it."

The name of the programmer responsible was not released, but officials said the person is a veteran county employee. The employee reported that tests before the election showed the system was working correctly, said Registrar Ingrid Gonzales, who oversees elections.

The county brought in a consultant, software provider DIMS Inc., on Thursday to review the programming and found the errors, Gonzales said. The testing and analysis the employee said had been done apparently was not, Gonzales said.

In some cases, the computer began counting in the middle of the ballot, so some holes weren't counted at all, Gonzales said.

Based on the review by DIMS, the candidates' totals will certainly change in 26 races. Officials are not sure what effect, if any, the error had on the other seven races in doubt.

"For some races, it may not have any effect on people who were going to lose anyway, but a significant number of races could be changed," Gonzales said.

The city election results will be counted Tuesday as well, just to make sure there were no problems and to give people confidence in the results, Gonzales said. A test showed the computer was programmed correctly for municipal races, she said.

Officials became concerned Tuesday night when the computer showed no votes cast for the Big River Community Services District board of directors.

An extensive review of the election system was conducted Wednesday through Friday, and widespread errors were found, Gonzales said. A letter was mailed to more than 300 candidates on Wednesday notifying them of potential problems.

"This is certainly rare, but it happens," said Gonzales, who has served eight years as registrar and 21 years in the field. "You hear stories across the nation about elections being tainted. I never thought it would happen here."

From now on, an outside firm will be brought in before all elections to confirm that computers are properly programmed.

"It's hard to describe how personally disappointed I am that this has happened," Gonzales said. "I would like to assure the public that we know exactly how this error occurred and that measures are underway to prevent it from ever happening again."

County officials said the good news is that using a card-counting system means that ballots are still around to be recounted. If the same error had occurred with an electronic voting system, there would be no paper record, Wert said.

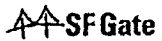
The employee responsible for the error has been disciplined, but Wert declined to say how. Gonzales said the person still is on the job but has been taken off computer programming duty.

\*

Correspondent Tipton Blish contributed to this report.

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CA

## Can anyone count votes?

Friday, November 9, 2001  
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URL: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/11/09/ED192020.DTL>

COUNTING BALLOTS in San Francisco will never be easy. Super-heated interest groups, pushy political leaders and on-the-move apartment dwellers can challenge any registrar of voters.

What's needed are experienced hands, clear rules and reliable operations. This city has none of these.

It goes too far to cry foul, as some partisans in Tuesday's election charge.

But vote counting in San Francisco has become a sad circus with ballot boxes diverted and poorly secured. City Administrative Officer Bill Lee and Elections Director Tammy Haygood refused to spell out what was taking place amid rumors of anthrax-tainted envelopes and a counting room out of sight from election observers.

The city needs an accounting of the tangled events that took place Tuesday night, as Supervisor Aaron Peskin has requested from Haygood. City Attorney Louise Renne is right to ask Secretary of State Bill Jones to investigate the confusion.

San Francisco needs a broader answer to the desultory performance it regularly gets from its elections team. Dating back to 1995, the city has botched the job through improper forms, irregular hours or or computer breakdowns. A succession of registrars never took charge.

San Francisco is still counting ballots long after other Bay Area counties have posted results and hauled vote machines back to storage. What makes this city immune to efficiency?

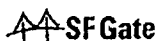
There are partial answers. Few registrars put up with demands for multilingual forms, absentee ballot requests generated by interest groups and high-pressure watchdogs assigned to the office by candidates and causes.

Also, both Mayor Willie Brown and his foes on the Board of Supervisors have feuded unhelpfully. Haygood, the present registrar, has no background in running elections. The office routinely asks for extra money when it busts its budget because of poor planning and overspending. A new plan, passed by voters,

takes the job away from the mayor's indirect rule and gives it to a commission, meaning more roiling changes.

Voting habits add complications. Nearly a fifth of Tuesday's ballots were absentee or provisional, which require hand checking. Provisional ballots are cast by voters, often residents who recently moved, who don't show up on polling-place books and may be registered elsewhere.

No question: There are headaches in running elections. But, whether in San Francisco or Florida, voters who exercise their sacred right should have their ballots counted with care and precision.



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## Count uproar eclipses S.F. election reform 63% of fed-up voters approved overhaul

Helen Lechuk, Chronicle Staff Writer

Friday, November 16, 2001

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URL: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/11/16/MN232343.DTL>

**San Francisco** -- Lost in the shadow of San Francisco's bizarre ballot controversy last week, voters approved a measure that demands the city clean up the beleaguered Elections Department -- and end its history of elections problems.

Proposition E passed with nearly 63 percent of the vote, a strong signal that voters are fed up with slow counts, conspiracy theories about missing ballots and the director's office revolving door.

Proposition E creates a new seven-member commission to run the Department of Elections and hire a director -- replacing a system that has produced five directors in as many years and is under investigation by the secretary of state.

That could mean the newest elections chief, Tammy Haygood, who is already in the hot seat after last week's election, could be replaced by the new commission.

The proposition was one of several written by the Board of Supervisors to shrink the power of the mayor, who is in control of the elections office. Mayor Willie Brown's chief administrative officer, Bill Lee, has chosen the past few elections' directors, including hiring Haygood a few months ago.

"Prop. E is the first step to ensuring honest and independent elections in San Francisco for the first time in 25 years," said Supervisor Tony Hall, one of the measure's authors.

Hall has a personal interest. He believes votes were tampered with during his tight race last fall against Brown-backed Supervisor Mabel Teng. Hall won by 38 votes.

"I think there's been a lot of maneuvering," Hall said. "I think some elections have been manipulated."

But the mayor has recently defended the elections staff for doing good work under unusual amounts of scrutiny. As for his influence over Haygood or other directors, Brown has said he steers clear of the department precisely so he won't be accused of pulling strings.

Lee also insists that San Francisco runs clean elections.

In fact, few allegations of fraud have ever been proved, although grand jury studies have found bureaucratic fumbles.

"Running the elections office is the most difficult job in the city because if someone loses, they always want to blame the elections office," Lee said.

Haygood saw exactly how difficult her job could be last week, when two controversial measures to create a public power agency hung in the balance.

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Miscommunication by Haygood and her staff about whether absentee ballots were moved from City Hall sparked several tense news conferences with the elections director. Despite early denials by elections officials, absentee ballots arriving in the mail were moved to a separate building as a precaution against an anthrax threat. That angered public power advocates who argued that those ballots weren't watched and might have been easy targets for tampering.

History fueled the controversy. Past election follies in the city include incorrectly printed sample ballot books, misplaced and duplicate ballots and wet ballots that had to be dried in a microwave.

Making matters worse, allegations hanging over the November 2000 election remain unresolved. The secretary of state is expected in the coming days to release a report after a six-month investigation into the department's actions in that election.

Proposition E attempts to restore voter confidence. Seven city agencies each will appoint one member to the new Elections Commission, including the mayor and Board of Supervisors. The measure calls for the commissioners to take office in January.

Others making appointments to the commission are the district attorney's office, the city treasurer's office, the board of education, the city attorney's office and the public defender's office -- all headed by elected officials.

City employees from other departments are banned from helping with elections, except on election day, without Board of Supervisors approval.

The measure also mandates that sheriff's deputies escort ballots every step -- from polls to City Hall -- on election day.

The measure further requires poll workers to post how many ballots were cast at their sites and how the precinct voted. The new computerized Eagle machines, where voters deposit their ballots after voting, can make that information available in seconds.

"Then there can't be an allegation made (on election night) that more ballots suddenly appeared from somewhere," said Supervisor Matt Gonzalez, who helped write the proposition.

Jim Chappell of the San Francisco Planning and Urban Research Association, which opposed Proposition E, said cutting the mayor's alleged influence on the cash-strapped and short-staffed department wouldn't solve anything.

"Adequately funding the department will make it different," Chappell said.

Local election reform might not stop here with supervisors considering a variety of other measures.

City attorney candidate Jim Lazarus, who is vying against Dennis Herrera in the Dec. 11 runoff, said that if elected, he would create a legal elections task force that would include representatives of the secretary of state and district attorney.

*E-mail Ilene Lelchuk at [ilelchuk@sfgate.com](mailto:ilelchuk@sfgate.com).*

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# The Denver Post

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## Baker blamed for downed machines needed in recall vote

By George Merritt  
Denver Post Staff Writer

Thursday, February 12, 2004 -

ARAPAHOE COUNTY - County officials have said they will have to spend nearly \$100,000 to replace batteries in 800 voting machines to ready them for Tracy Baker's recall election Feb. 24.

County Attorney Kathryn Schroeder placed the blame on Baker, saying that maintaining the machines is one of the most basic parts of his job as clerk and recorder.

"It is crucial to holding our elections," Schroeder said.

A county employee has accused Baker of ordering him to discontinue maintenance of the machines, effectively disabling them. The employee is now on leave after filing a complaint against Baker with the Equal Employment Opportunity Commission.

"It is an act of sabotage," said Mari Newman, the attorney for Woodrow Barnes, the employee making the claims.

Newman said that when her client protested Baker's order, Lisa Sale - Baker's girlfriend and assistant chief deputy - told him, "Well, that is (the county's) problem, and they can deal with that."

The problem was discovered in October, but officials said the batteries can't be recharged once they are drained.

Denver attorney Rick Daily said that if the county could prove Baker told an employee to neglect equipment, Baker could face criminal charges.

Baker denies any responsibility for the gaffe. He said Barnes' and Newman's claims were "libelous."

Baker said he installed the election machines himself in 1986 and would never sabotage them. County officials are at fault for placing Barnes, who was responsible for the machines, on leave, Baker said.

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CT

## Caruso is campaigning to bring election reform to Bridgeport

 [PRINT ARTICLE](#)



(09/23/03) BRIDGEPORT - After his failed run in the Bridgeport Democratic mayoral primary, State Representative Chris Caruso (D-Bridgeport) has decided not to challenge the results in court. Instead, he plans to file fraud complaints with the state Elections Commission.

Caruso says he discovered that 144 people went into the polling places, but their names were not check off on a voting list. He also alleges some voters were able to vote twice while other were denied voting privileges.

By not going to court, Caruso has given up the possibility of a judge overturning the election, which means he won't have a chance to run for mayor in November.

As for any fraud in the Primary election, it will be up to the state Elections Commission to investigate.

Video : <http://ondemand1.cv.net/news12/CCCC923T.asx>

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**Officials: Should Sequoia's proposal be tossed?**

November 12, 2001

**By Deborah O'Neil and Thomas C. Tobin**  
St. Petersburg Times

The Louisiana court documents paint a damning portrait: Voting equipment executive Phil Foster received manila envelopes stuffed with as much as \$40,000, to be delivered as kickbacks.

That money was part of a vast voting machine scandal that resulted in charges against 25 people, three of whom told prosecutors Foster was involved.

But Foster's bosses at Sequoia Voting Systems were so confident of his innocence that they let him take a lead in trying to sell, among other packages, \$2 million worth of touch-screen voting equipment to Indian River County and \$15.5 million worth to Pinellas County.

Indian River County commissioners Tuesday voted to void the deal they had already signed with Sequoia when they learned of Foster's Louisiana indictment.

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Now, amid intense statewide scrutiny, the commissioners are joining their Pinellas colleagues in weighing whether unproven accusations against a company representative should be enough to throw out Sequoia's proposal.

The entire nation is watching as Florida reforms its election process, said Susan MacManus, a University of South Florida political scientist and chairwoman of the Florida Elections Commission.

"Anything related to voter equipment that even smells bad will be and should be carefully investigated for the good of all," MacManus said. "The scrutiny doesn't stop at the county boundary. It goes national."

In Tampa, Hillsborough County has recently launched a review of the case against Foster, said Supervisor of Elections Pam Iorio.

"I think it is important to know what litigation the companies are facing across the country," Iorio said. "These (the charges against Foster) are very serious allegations."

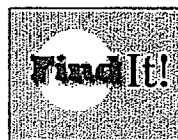
But others wonder how much the charges matter. In Tallahassee, Leon County Supervisor of Elections Ion Sancho, whose county boasted the lowest error rate in the state in the presidential election, said that while news about Foster "raises the specter of impropriety, I don't know to what degree you could point to the company as bad."

Sequoia's product, he said, "is a

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Sequoia's product, he said, "is as good as what I use."

And the quality of the machines is why Indian River County chose Sequoia, said Kay Clem, the county's elections supervisor.

She said she made the decision knowing all about Foster's legal problems, adding, "I thought everybody knew about it."

"I'm not buying Phil Foster," Clem said. "I'm buying Sequoia's voting system."

Foster's charges are part of a decade-long corruption scandal that reached as high as the state's elections commissioner. Foster is charged with two counts of conspiracy to commit money laundering and one count of conspiracy to commit malfeasance in office.

Already, 15 people have pleaded guilty in the case, said Assistant District Attorney Sandra Ribes in Baton Rouge.

Three of them, including Foster's brother-in-law and the state commissioner of elections, pointed the finger at Foster in their guilty pleas. According to court records, Foster had Sequoia designate his brother-in-law, J. David Philpot, as its exclusive agent in Louisiana.

Then-Louisiana Elections Commissioner Jerry Fowler declared Philpot the sole source of a certain type of voting machine, allowing them to circumvent the state's bidding laws and inflate the prices of the machines.

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Foster and Philpot also arranged to sell counters for voting machines at inflated costs, according to court records.

Money was funneled to Fowler in kickbacks, and court records indicate Foster played a role in passing along the cash.

On at least five occasions, Philpot handed Foster manila envelopes with \$20,000 or \$40,000 of kickback cash to give to another person involved in the scandal, Philpot says in court documents.

Also, Fowler told prosecutors that Foster would put cash kickbacks in a desk drawer for him. Foster's Baton Rouge lawyer, Karl Koch, said the case against his client is built on statements by admitted criminals.

"My investigation of the charges reveals he hasn't done a thing in the world wrong," he said.

Foster didn't know what was in the sealed envelopes he brought to Louisiana for his brother-in-law, who was in Birmingham, Ala., Koch said.

"Phil wasn't handed bundles of cash or wads of cash," Koch said.

Nor was Foster in a position to get his brother-in-law named as a company agent, Koch said.

Both Foster and Sequoia have fully cooperated with the investigation, Koch said.

Clem has stressed that the

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company has not been implicated.

Sequoia President Peter Cosgrove said the company has nothing to hide. The company assumed, he has said, that Pinellas and Indian River officials were aware of Foster's legal problems, which he said were "well, well known."

The company has not removed Foster from his responsibilities as Sequoia's southeastern vice president, Cosgrove said, because it doesn't believe he has done anything wrong.

"We will not put down an innocent man," he said.

However, if Pinellas prefers, Sequoia will withdraw him from the project, Cosgrove said.

Clem, in fact, has said she dealt not with Foster but with John Krizka, Sequoia's agent in Jupiter.

Indian River County Administrator Jim Chandler, however, has said Foster was the one who negotiated the final price with him.

Cosgrove added that the charges should not affect the county's decision about the purchase of the new voting equipment. All the reasons that Pinellas and Indian River officials intended to buy the system remain, he said.

"None of those reasons have changed," Cosgrove said.

*Press Journal*  
*News staff writer*

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*Henry A. Stephens contributed to  
this report.*



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## "Follow The Chad"

an investigation  
into the ownership  
of america's  
"election services industry"

an american election

# BAY OF PIGS 2000: THE FLORIDA SURPRISE



It has all the ingredients of a Silent Coup in some jerkwater Banana Republic...

There are shadowy figures from Organized Crime rubbing elbows in Miami restaurants with "retired" CIA agents and Bay-of-Pigs-era Cubans...

"Business" is conducted ever-so-discreetly, covert op style, behind the heavy velvet drapes of dummy "front" companies...

And since these are rarely bloodless affairs, there's a dead body (or two or three) lying around somewhere in the background. In court, one lawyer has even called it a "sinister conspiracy," language uncharacteristically-blunt for civil proceedings.

But this coup isn't just another Central American "transfer-of-power;" it involves, instead, the possible subversion of the very democratic process itself.

Only this time it didn't take place in a country with a foreign-sounding name...but in the United States of America.

In November. In Florida.

029697

## "Tangled Webb City"

Here's a brief run-down on a few of our "players:"

Harold and Herb Webb are twin brothers operating election service industry companies in New Jersey. These companies, Garden State Elections and Elec-tec, were used to conceal transactions involving election services industry giant Sequoia Pacific, according to court documents, which fingered that company last week for orchestrating a 10-year long bribery scheme involving the Commissioner of Elections for Louisiana.

watch a clip  
(1minute 30 sec.)  
from  
"Follow the chad!"

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'barry and the boys' now!



But Harold and Herb Webb aren't even the only Webb's in this tangled scheme...Industry giant Sequoia Pacific's General Manager's name is Hugh Webb.

Harold Webb, Herb Webb, and now Sequoia's Hugh Webb. Is it just a 'tangled Webb?'

Or something *more*?

**"We don't know why we broke into the Watergate, honest."**

Herb Webb, president of a firm proven to have acted illegally on Sequoia Pacific's behalf, denied to this reporter even *knowing* Hugh Webb.

read the  
INTRODUCTION

Part I

Sequoia Pacific head honcho Hugh Webb returned the favor, denying knowing either Herb *or* Harold Webb... a neat trick, since Harold Webb has admitted to prosecutors that he was acting on behalf of Hugh Webb's company.

PART II

Part III

Prosecutors have the ability to untangle this tangled Webb. The question is: *will they*?

Part IV

There is even *another* extended "family," that of Sequoia Pacific's Southern Regional Sales Manager Phil Foster, with deep connections to the bribery scheme... Phil Foster is about to be indicted in Louisiana, while his brother-in-law, David Philpot, is soon to stand trial.

029698

And then there is also James Foster, of James Foster Associates, the Texas firm which printed Florida's Republican absentee ballot applications...Remember *them*? The ballot applications where a voter i.d number had been "*inadvertently*" left off?

### "Follow the Chad"

Sequoia Pacific operates through a number of dummy front companies.

Pasquale "Rocco" Ricci's company, International Voting Machines, was really Sequoia Pacific. Harold Webb's Garden State Elections was really Sequoia Pacific. So was Herb Webb's Elec-tec. This is a list which could quickly grow much longer.

Many Florida Counties involved in the Vote Snafu used tabulating machines from Sequoia Pacific disguised as being from other vendors; Sequoia actually supplied both computer and punch card systems to Florida, in counties where their name has not yet surfaced.

The reason for all this elaborate deception? Clearly, some people have gone to some little trouble in an elaborate attempt to conceal Sequoia Pacific's role. Why?

A reporter for the Fresno Bee interviewed Hugh Webb recently. He told us, about Webb, "I was taken aback by his secretive nature."

There is a joke making the rounds just now in Southern State Capitals; like much humor it contains an uncomfortable truth that cannot yet be spoken in polite company...

"The *real* vote snafu in Florida," goes the joke, "concerns what happened after the Sunshine State purchased used election machines from the state of Louisiana, and on *those* machines Edwin Edwards was elected President in a landslide."

There's a hidden truth behind the sarcasm: Edwards is the convicted former Louisiana Governor, and the 'one-liner' describing this budding scandal threatening

Posted to the Internet  
December 26, 2000  
([email the editor](#))

029599

to burst out in screaming Technicolor is this:

"Florida used the same (doctored) machines as Louisiana. And they came from the same 'shadowy' sources."

(to be continued.)

## State is ordered to seize ballots in Detroit election

**BY BEN SCHMITT**  
FREE PRESS STAFF WRITER

November 24, 2005

Acting on a request from defeated Detroit mayoral candidate Freman Hendrix, a Wayne County judge ordered the Michigan Secretary of State's Office on Wednesday to take control of all the ballots in the Nov. 8 election and keep them locked in a vault until a recount can be done.

A federal investigation of possible irregularities with absentee ballots, trouble with vote-tabulating equipment on election night, the fact that about 3,000 votes weren't counted until two days after the election and suspicious of ballot tampering led to the request.

Detroit city attorneys vehemently opposed Hendrix's move, calling it unnecessary. Detroit City Clerk Jackie Currie, who oversaw the election, did not object.

After Wednesday's ruling by Chief Circuit Judge Mary Beth Kelly, state elections officials had trucks en route to Detroit to take control of the ballots. State Elections Director Chris Thomas said the office would keep the ballots in a state building in Detroit.

The ruling came a day after Hendrix filed the request for a recount in an election that he lost to incumbent Mayor Kwame Kilpatrick by more than 14,000 votes.

Nonetheless, Hendrix's attorney, Elizabeth Hardy, said Hendrix had no choice but to request the ballot seizure after learning that Department of Elections rooms, where ballots were being held, were left open without a security guard during Tuesday's meeting of the city Board of Canvassers to certify the election.

Hardy also said Hendrix suspects there was fraud in the election. The suspicion "is based upon very pronounced anomalies in the election results," Hardy said. "If there was fraud, there obviously would be a motivation to destroy the evidence of fraud."

City Attorney Ruth Carter said there is no evidence of tampering and urged Kelly not to be persuaded by perceptions that something is amiss.

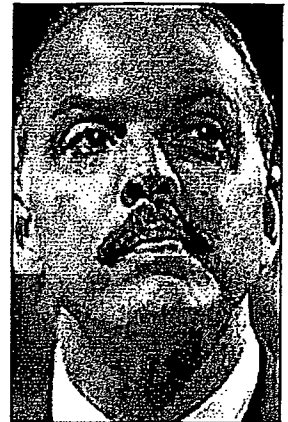
"There's no evidence of fraud," Carter said.

But Kelly said that ordering the state to take the ballots wouldn't harm either candidate.

"If there is to be a recount, the mayor has a stake in it," Kelly said. "I think the integrity of that recount is served by having the ballots removed from the possession of the city. I also think the public interest is served."

Kilpatrick has not yet decided whether he will file an objection to the recount, which county officials said will cost \$250,000 to \$500,000.

Kelly noted that Currie, through her private attorney, Steven Reifman, did not object to the state taking control of the ballots.



Freman Hendrix

MX

Kelly said Currie's acceptance of Hendrix's request -- coupled with concerns over ballot security and election irregularities -- caused her to make the decision. She noted that Detroit officials had lost track of ballots in nine precincts and did not count them until two days after polls closed.

In one case on election night, a poll worker took home two computer data packs containing ballot information and didn't turn them in until the following day.

"I don't think anyone can dispute that there have been irregularities," Kelly said.

Kelly had already granted federal prosecutors' Election Day request that the state preserve absentee ballots to make sure Currie's office handled them fairly and legally.

On Tuesday, city Department of Elections Director Gloria Williams asked Thomas to take possession of all the ballots, and he refused. Carter argued that Thomas' refusal showed the state has no concerns about tampering.

Contact **BEN SCHMITT** at 313-223-4296 or [schmitt@freepress.com](mailto:schmitt@freepress.com).

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## Sheriff's office joins watch over Detroit ballots

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### 2 judges divide on security needs

**BY KATHLEEN GRAY and BEN SCHMITT**  
FREE PRESS STAFF WRITERS

November 26, 2005

So who's minding the ballots from Detroit's election?

Seems like just about everybody at this point.

Responding to an emergency request from Mayor Kwame Kilpatrick, a Wayne County judge, early Thursday, ordered the county sheriff's department to guard a Secretary of State office to make sure no one tampers with ballots cast in the Nov. 8 election.

Those guards are in addition to the Michigan State Police troopers already protecting the ballots at the office in Detroit's New Center, where they were taken Wednesday after another Wayne County judge ordered them held for safekeeping.

Even before the election, there were concerns about the counting of absentee ballots. Since then, it has only gotten more complicated.

On Wednesday, Freman Hendrix, who lost the election to Kilpatrick by more than 14,000 votes, won an order from Chief Circuit Judge Mary Beth Kelly to place the ballots in the state's control until Hendrix's recount request is considered by the county.

Then, in the wee hours Thursday, Circuit Judge Cynthia Stephens signed an order granting Kilpatrick's request that the sheriff's department provide additional security.

Kilpatrick's lawyers said it was essential to maintain the integrity of the ballots. Questions of tampering had already been raised: Detroit officials lost track of ballots in nine precincts and did not count them until two days after polls closed. In one case on election night, a poll worker took home two computer data packs containing ballot information and didn't turn them in until the next day.

"When I spoke to the people from the state Bureau of Elections, they were not sure what security would be available," said Kilpatrick lawyer Reginald Turner. "Needless to say, all the parties in this matter have an interest in the security of the ballots."

State Elections Director Chris Thomas said as soon as the state took custody of the ballots, a trooper was dispatched to guard them.

"This is more theater than anything else. These ballots are getting more security than any ballots in the history of the state," said Thomas, who has noted that there has been no evidence yet of vote tampering. "It's very disappointing."

In Kilpatrick's request, Turner said they couldn't reach the other parties involved in the case. They also said they couldn't reach Kelly.



Detroit Mayor Kwame Kilpatrick was granted a request Thursday to increase security for ballots from the Nov. 8 election.

But Kelly and lawyers for Hendrix and for City Clerk Jackie Currie, who is named as a defendant in Hendrix's lawsuit, said Friday that they weren't called.

"I was physically available Wednesday and Thursday," said Kelly.

"Clearly, Judge Stephens has no jurisdiction to act in this matter. Her order is void and will be vacated first thing Monday morning,"

Hendrix's lawyer, Elizabeth Hardy, said the mayor's representatives are showing their "desperation to take control of the ballots."

Currie's lawyer, Steven Reifman, added, "I am shocked by the procedure and the fact that nobody made any attempt to communicate."

Contact **KATHLEEN GRAY** at 313-223-4407 or [gray@freepress.com](mailto:gray@freepress.com).

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## Councilman charged with vote tampering

Friday, November 11, 2005

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TRENTON - The state Attorney General's Office on Thursday announced the indictment of an Atlantic City councilman on charges of tampering with absentee ballots before the city's June 7 primary election for mayor and city council.

Marty L. Small, 31, has been charged with 10 counts of tampering with public records and one count of hindering or preventing voting. An arraignment is expected in the coming weeks in state Superior Court in Atlantic County.

"The integrity of the ballot is paramount to our democracy, and we will prosecute those individuals who attempt to tamper with any citizen's vote," Attorney General Peter C. Harvey said in a news release.

Small is accused of filing absentee ballot applications for 10 people. He represented himself as their "authorized messenger," when he had no such designation from the voters.

A registered voter in New Jersey has the option of having a person pick up their absentee ballot if they are unable to file for the ballot themselves.

Small faces up to 55½ years in prison and \$160,000 in fines if convicted, though incarceration is considered unlikely.

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<http://www.borderlandnews.com/stories/borderland/20040212-80374.shtml>

**Borderland** Thursday, February 12, 2004

## Sunland Park voting machine seized by state

*Steve Ramirez*  
*Las Cruces Sun-News*

SUNLAND PARK -- A voting machine at the Sunland Park Municipal Building allegedly used for absentee voting was confiscated Wednesday by New Mexico State Police.

Doña Ana County District Attorney Susana Martinez said 111 votes had been registered on the voting machine from Feb. 4 until 2 p.m. Wednesday.

State elections supervisor Larry Dominguez said the voting machine and a registry of absentee voters in Sunland Park were seized after officials with the New Mexico Bureau of Elections, a division of the New Mexico Secretary of State Office, found out that the voting machine was apparently used before the use was allowable.

The voting was for Sunland Park's March 2 municipal elections. Registered voters in the city will elect a mayor, three city council members and a municipal judge. Dominguez said that until Wednesday absentee voting should have been conducted on paper ballots, sealed in envelopes and placed in a locked box that will not be opened by city officials until after polls close.

*Steve Ramirez may be reached at [sramirez@lcsun-news.com](mailto:sramirez@lcsun-news.com)*

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### Ballots held in county races

Albany -- Court order sets out extensive process to verify absentee votes in three Democratic primaries

By CATHY WOODRUFF, Staff writer  
First published: Saturday, March 6, 2004

All absentee and paper ballots and 47 voting machines used in three Democratic primaries for the Albany County Legislature were impounded Friday under a court order that also sets out an extensive process for verifying the votes.

State Supreme Court Justice Louis Benza signed the order requested by Democratic primary candidates Wanda Willingham and Lucille McKnight, both incumbents, and Ward DeWitt, who challenged District 4 incumbent Virginia Maffia-Tobler.

The three candidates, all African-Americans represented by attorney Paul DerOhannesian, asked that no winners be certified in the special primaries until voting machines are inspected and recanvassed and the validation of absentee and other paper ballots is completed.

The court order and heightened ballot scrutiny are the latest developments in a hotly contested special election ordered by federal courts earlier this year to correct district lines that shortchanged minority voters.

In all three races, significant numbers of absentee ballots remain to be counted, including many that were distributed by a Democratic ward leader and other supporters of the three candidates' opponents.

"There is at least the perception of the possibility of influence on voters with someone delivering ballots and looming over you as you fill it out," DeWitt said Friday. "The process is fraught with the opportunity for influencing the voter."

The closest race, according to unofficial machine tallies, is in Legislative District 3, where Willingham holds a slim 217-213 lead over Jestin Williams.

However, Board of Elections records show that 225 absentee ballots were issued for District 3. More than half -- 131 -- were released to 3rd Ward Leader Jamie Gilkey -- who backs Williams -- for delivery to voters.

Of the 139 absentees returned to the board as of Thursday afternoon, 105 were handled by Gilkey.

Willingham called the distribution of so many ballots through a partisan campaign worker "an embarrassment to the Albany County Democratic Party." She said she believes she has been targeted by a small party faction "because I have my constituents at heart, not the interests of a particular administration at City Hall or the head of the county Democratic Committee."

Efforts to reach Mayor Jerry Jennings and Democratic Chairwoman Betty Barnette for comment Friday were unsuccessful.

Many District 2 absentee ballots also were handled by Gilkey and an associate who worked for

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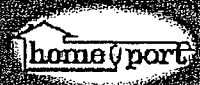
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McKnight's challenger, Marilyn Hammond.

In unofficial machine results, McKnight trails Hammond, 210-177. Of 113 absentee ballots issued, 11 were released to Gilkey and 27 to Dennis Bagley, a Democrat who ran against Common Council member Carolyn McLaughlin, Willingham's sister, in 2001.

Bagley and Gilkey, an employee of the Albany Housing Authority, distributed 18 of the 41 absentee ballots returned for District 2.

Hammond and Williams both released statements Friday asking that all the absentee votes be counted and the results allowed to stand.

"They shouldn't try to use the courts to block the will of the voters," Hammond said. "We should just let everyone's voice be heard in the political process and count all the votes."

Williams said: "Those ... people have a right to have their votes counted."

McKnight, however, said Bagley and Gilkey's control over distribution of so many ballots in her heavily minority district makes it unclear whose voice is speaking through those votes.

"Why are these two white men serving as an agent for someone trying to defeat two black women?" she asked, referring to Bagley and Gilkey.

Hammond and Williams, like McKnight and Willingham, are black.

In District 4, where new district boundaries were supposed to improve chances for minority voters to elect candidates of their choice, unofficial machine tallies show DeWitt, who is black, trailing incumbent Maffia-Tobler, who is white, 168-157.

Some 195 absentee ballots were issued in District 4, including 26 to Tyler Trice, who DeWitt says seemed to be participating in the Maffia-Tobler campaign. Trice has been an employee of the Albany Housing Authority, though it could not be determined on Friday whether he still is. He ran unsuccessfully for the city school board in 2002, with the backing of the mayor.

Trice handled 17 of the 101 absentee ballots for District 4 returned by Thursday afternoon, according to Board of Elections records.

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per machine may also be needed in polling places that have large numbers of elderly voters or persons with limited ability in English because such voters may require more time.

### FEDERAL OBSERVERS MONITOR STATE AND LOCAL ELECTIONS IN 15 COUNTIES IN 8 STATES

The Justice Department sent 160 federal observers and 39 Civil Rights Division personnel to 15 counties in 8 states to monitor the November 4 state and local elections. Reasons for the observers varied with the counties.

For three counties, the federal observer authority came from court orders. Observers were sent to another eight counties based on special coverage provisions of the Voting Rights Act. Federal observers monitored eight counties in Mississippi: Humphrey; Jones; Kemper; Leake; Neshoba; Newton; Noxubee; and Winston. They also observed elections in Wayne County (Hamtramck), Michigan; Passaic County, New Jersey; and Berks County, Pennsylvania.

Civil Rights Division personnel, most of whom were attorneys, monitored elections in San Francisco County, California; Jefferson County, Kentucky; Essex County (Lawrence), Massachusetts; Queens County, New York; and Harris County, Texas.

The observers and Department personnel monitored to determine whether these counties and localities were complying with federal voting laws, including minority language provisions of the Voting Rights Act; whether voters are challenged improperly on the basis of race, color, or language minority. The observers also monitored to determine whether jurisdictions were permitting voters who are blind, disabled, or unable to read or write to have assistance by a person of their choice, as well as permitting all eligible voters to cast a ballot.

### ONONDAGA COUNTY N.Y. IMPROVES ITS PROCEDURES TO ENSURE VOTING MACHINE BALLOTS ARE CORRECT

The Onondaga County, New York Board of Election Commissions following the election November 4 introduced improved procedures for voting machine preparation to ensure that all candidate's names are on the ballot, and that they are in the right row or rows.

Onondaga County uses AVM lever voting machines in which the names of the candidates are on strips that are inserted into the ballot face of each machines. On election morning in November, election officials were advised that one voting machine had been set up incorrectly.

When election officials checked the machine after 26 persons had voted, they discovered that *no* Democratic candidates were listed because that machine contained no B row strips. Instead the machine had two C row strips with the names of the Independence Party candidates. Technicians inserted a row B strip that contained the names of Democratic candidates, but the strip contained the wrong ballot style for that election district. The name of county legislative candidate Donald MacLaughlin never appeared in the Democratic row on that machine.

The omission took on added importance when the votes were tallied and MacLaughlin lost to incumbent Republican Bernard Kraft by only 165 votes. MacLaughlin's name, which should have

appeared twice -- as the nominee of the Democratic and Working Families Party -- only appeared once on this voting machine as the nominee of the Working Families Party. Kraft's name appeared on the ballot face three times, as the nominee of the Republican, Conservative, and Independence Parties.

After examining the situation, MacLaughlin conceded the election because the error could not have reversed the outcome. Only 164 votes had been cast on the machine in question of which MacLaughlin received 40 votes on the Working Families row. Because no other candidate on the Working Families line received more than 10 votes on this machine, it appeared that some voters Democrats who wished to voted for MacLaughlin as a Democrat found his name on the Working Families party line.

***Onondaga's corrective actions.*** Onondaga election procedures will now require two persons (rather than one) to check both the front and back of each voting machine when it is set up. Polling place officials will have a checklist of items they must check off including verification of each party strip, and each name on each strip.

In addition, the ballot style numbers, which had been printed in small type, will now be printed in large numerals so that ballot style numbers will not be easily confused. In this election for example, with the small print it was easy to confuse ballot style 36 with ballot style 38. The row initials, Row A, B, C, D, or E, will also be printed in large letters on the right side of the ballot strip.

#### **TAVARES, FLORIDA SAVES \$5,000 FLIPPING COINS INSTEAD OF CONDUCTING COUNCIL ELECTION**

The City of Tavares, Florida decided that \$4,500 to \$5,000 it would have to spend on an election to determine which councilmembers would serve two-year terms, and which one would serve a one-year term could be better spent elsewhere. With the agreement of the only three candidates for at-large council seats, the city council passed a resolution to settle the matter by flipping coins rather than going to the voters.

Three at-large council seats were up for election in November, 2003, with two of them for two-year terms. The third seat, held by Councilmember Nancy Clutts, was for the one-year remainder of a term to which Councilmember Norb Thomas had originally been elected.

Only three candidates, including Clutts, qualified to run for council, therefore all were deemed elected. Because the city charter failed to specify how the three seats were to be assigned, the city council resolved the matter in September by resolution rather than holding a November election.

The resolution provided that on November 5 the three newly-elected council members simultaneously flip a coin provided to them by the City Clerk. *"The two candidates whose coins land on the same face (either both heads or tails) shall be deemed elected to the two year council terms. The candidate whose coin lands on the opposite face shall be deemed elected to a one-year term."* The resolution provided for a re-toss if all coins land on the same face.

City Clerk Nancy Barnett, who supplied half-dollar coins for the flip, told *Election Administration Reports* the candidates had to flip three times before they produced a 2-1 split that determined the terms.

100183

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voter and challenge and date geq (01/01/2000)

029711

FOCUS - 47 of 55 DOCUMENTS

Copyright 2000 Newsday, Inc.  
Newsday (New York)

November 23, 2000, Thursday QUEENS EDITION

**SECTION:** NEWS; Page A18

**LENGTH:** 418 words

**HEADLINE:** JUDGE REVOKES BAIL IN TRIAL OF EX-UNION CHIEF

**BYLINE:** By William Murphy. STAFF WRITER

**BODY:**

A former top city labor official had his \$125,000 bail revoked yesterday after a court-appointed psychiatrist found he was not mentally fit to be tried on charges of stealing more than \$1 million from his union.

Al Diop, 67, who had been in an in-patient program at Lenox Hill Hospital, was ordered transferred to a jail ward at Bellevue Hospital by State Supreme Court Justice William Leibovitz.

The judge set Dec. 8 for a court hearing at which the Manhattan district attorney's office can challenge the finding of the court-ordered evaluation.

The embezzlement trial would be Diop's second in connection with prosecutors' probe into widespread fraud at District Council 37, an umbrella organization representing 125,000 municipal workers. Diop was previously convicted of fraud for rigging a vote to ratify a controversial five-year contract that gave city workers no raise for the first two years.

Prosecutors and defense attorney Ramon Pagan said it was unlikely Diop would be sentenced as scheduled next week on his conviction over the contract vote.

An investigation by the Manhattan district attorney's office had found that top union leaders stuffed ballot boxes, opened ballot envelopes and misreported votes.

Diop had been president of Local 1549, representing 22,000 city clerical workers, and was a member of the DC 37 executive board.

The vote fraud led to a deeper investigation that resulted in convictions for a variety of charges, including a scheme that inflated the price of holiday turkeys given to union members, with the supplier kicking back a percentage of the inflated bills to union leaders.

Diop's attorney said the finding by the court-appointed psychiatrist was consistent with what private psychiatrists at Lenox Hill had found.

"The court has not yet made a determination on his fitness to proceed or his mental competency," Pagan said, adding that all reports so far were recommendations to the court, not legal findings.

"The prosecution will now have an opportunity to challenge the finding of the court-appointed forensic psychiatrist," Pagan said.

Diop faces up to four years in prison for his conviction in the vote fraud.

His three codefendants in the case involving the theft of money pleaded guilty last month. One agreed to a sentence of probation; two accepted pleas calling for prison terms of 1 1/2 to 4 1/2 years in prison and 2 to 6 years in prison.

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ballot box and theft

Focus:

vote and police and date geq (01/01/2000)

029715

FOCUS - 45 of 106 DOCUMENTS

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March 28, 2003 Friday Utica Edition

**SECTION:** LOCAL; Pg. 4

**LENGTH:** 1775 words

**HEADLINE:** The Record

**BYLINE:** Staff Reports

**BODY:**

Police NewsCourt date postponed in PBA election case

UTICA — A court date for a civil action by Utica police officers alleging ballot box tampering in the most recent police union election was adjourned to April 17 and 18, court officials said Thursday.

The legal action, requesting a new election, was filed in state Supreme Court last month by Utica police Sgt. Gary Glatt, who was defeated by incumbent Sgt. James Franco in a bid for the John E. Creedon Police Benevolent Association presidency during the Dec. 9-10 election.

The action alleges a discrepancy in vote tallies as well as improper placement of the ballot box and the immediate disposal of the ballots after the election, court documents state.

— Kelly Hassett

Police probe death of baby

UTICA — Utica police are investigating the death of a baby who died in its crib Thursday on West Street, Lt. Mark Williams said.

Further details could not be learned Thursday night.

— Cecilia Le

Police arrest 3 on drug charges

UTICA — Police Thursday arrested three people and seized an ounce of crack cocaine with a street value of \$2,500, marijuana and money in the 1200 block of Whitesboro Street, the state police Community Narcotics Enforcement Team said.

Terrel L. Loadholt, 24, was charged with criminal possession of crack cocaine with intent to sell, a felony. Two other Uticans, ages 22 and 27, were charged with unlawful possession of marijuana.

Loadholt was sent to Utica City Jail pending his arraignment today. The other two were released on appearance tickets to return to Utica City Court.

— Cecilia Le

Stolen property: State police in Herkimer charged a man Thursday with numerous vehicle and traffic law violations on state Route 5 in Schuyler. He was also charged with criminal possession of stolen property after police discovered the registration plate on his vehicle was stolen, police said.

**BIRTHS**

Faxton-St. Luke's Healthcare

029716

Crane — To David and Elizabeth Crane, Holland Patent, March 26, 2003, a son.

Hart — To Jerry and Sarah Comstock Hart, Ohio, March 25, 2003, a son.

Lebron — To George Lebron and Heather Sebastian, Utica, March 26, 2003, a son.

Patterson — To John Patterson and Tiffany Cook, Utica, March 26, 2003, a son.

Schachtler — To Christopher and Kimberly Valenzano Schachtler, Waterville, March 26, 2003, a daughter.

Out-of-town births

Paulson — To Karl Paulson and Nicole Leo, Utica, at Crouse-Irving Hospital, Syracuse, March 18, 2003, a daughter.

Send out-of-town birth announcements to Out-Of-Town Births, Observer-Dispatch, 221 Oriskany Plaza, Utica, NY 13501.

#### DEATHS

Azzarito, Peter, 92, of Utica, died March 27, 2003. Arrangements by Matt Funeral Home, Utica.

Ciamaga, Emily, 76, of New Hartford, died March 26, 2003. Arrangements by Kowalczyk Funeral Home, Utica.

Costello, Marguerite J., 56, of North Utica, died March 27, 2003. Arrangements by Heintz Funeral Home, North Utica.

DeMichele, Dominick J., 76, of Utica, died March 26, 2003. Arrangements by Eannace Funeral Home, Utica.

Gressler, Lorraine P., 55, of Little Falls, died March 27, 2003. Arrangements by Chapman-Moser Funeral Home, Little Falls.

Guaspari, Lena L., 87, of Rome, died March 27, 2003. Arrangements by Nicholas J. Bush Funeral Home, Rome.

Hazard, Elisabeth A., 77, of Earlville, died March 26, 2003. Arrangements by Burgess & Tedesco Funeral Home, Earlville.

McNamara, James, 73, of Blossvale, died March 25, 2003. Arrangements by Barry Funeral Home, Rome.

Phelps, Charlotte S., 66, of Greensboro, N.C., and formerly of Utica, died March 26, 2003. Arrangements by Forbis & Dick Guilford Funeral home, Greensboro.

St. Germain, Bertha, 92, of Ilion, died March 26, 2003. Arrangements by Nunn & McGrath Funeral Home, Utica.

Stasio, Thomas L., 78, of Rome, died March 25, 2003. Arrangements by Bottini Funeral Home, Rome.

Stenglein, Herbert, 73, of Morrisville, died March 25, 2003. Arrangements by Burgess & Tedesco Funeral Home, Morrisville.

Wyman, Tech. Sgt. David E., 33, of Maxbass, N.D, and formerly of Deansboro, died March 19, 2003. Arrangements by Kloster-Northrop & Bentz Funeral Home, Waterville.

E Obituaries — 2B

#### LOTTERIES

Thursday

Midday

Numbers: 314

WinFour: 2570

Night

Numbers: 174

WinFour: 5151

Pick 10: 2, 3, 6, 7, 13, 15, 22, 23, 26, 31, 32, 36, 38, 40, 44, 47, 57, 59, 65, 68

Take 5: 8, 20, 23, 32, 37

Wednesday

Midday

Numbers: 240

WinFour: 7486

Night

Numbers: 775

WinFour: 7137

Pick 10: 12, 16, 18, 20, 21, 25, 27, 28, 30, 37, 41, 49, 55, 56, 58, 59, 68, 73, 74, 76

Take 5: 12, 18, 24, 25, 37

Lotto: 21, 32, 38, 47, 48, 58. Bonus 46

Bankruptcy filings

The following people and organizations filed for bankruptcy protection from the U.S. Northern District Bankruptcy Court.

Vincent and Elizabeth DArrigo, 6089 State Route 167, Little Falls, Chapter 13.

Richard Joseph Fedor, 5813 Youngs Road, Vernon Center, Chapter 7.

Michael and Cheryl Tartaglia, 4 Wood Road, Apt. D-6, Whitesboro, Chapter 7.

David M. Ricketts, 132 Cherry Lane, Sherrill, Chapter 7.

James G. and Jo Ann M. Salamone, 261 Church St., Little Falls, Chapter 7.

David H. and Gloria J. Cox, 308 Russell St., Chittenango, Chapter 7.

Marie A. Cook, 1966 Walker Road, Camden, Chapter 7.

Wendy M. Smith, PO Box 1018, Route 20, Morrisville, Chapter 7.

William L. and Vincetta R. Borst, 4517 State Route 49, Rome, Chapter 7.

David M. and Leta A. Catalani, 8856 Lachausse Road, Boonville, Chapter 13.

Dale M. Budlong, 53 Stone Ridge Lane, Lee Center, Chapter 7.

Robin E. Windhausen, 5762 E. Main St., Verona, Chapter 7.

Jessica A. Colvin, 329 Washington Ave., Oneida, Chapter 7.

Wayne A. and Betty Kicak, 206 W. Bloomfield St., Rome, Chapter 7.

Ward Bonds, 401 N. Levitt St., Apt. 14, Rome, Chapter 7.

Paul F. LaVeck, 316 Third Ave., Frankfort and Kim M. LaVeck, 226 Main St., Ilion, Chapter 7.

Sue D. Breen, 105 S. Berkey Drive, Chittenango, Chapter 13.

Richard Henry Clark Jr., 10375 River Road, Camden, Chapter 7.

Steven C. Linn, 1707 Lincoln Lane, Rome, Chapter 7.

Randolph G. and Jill M. Miller, 37 Whitesboro St., Yorkville, Chapter 7.

Deborah A. OBryan, 512 Main St., New York Mills, Chapter 7.

John J. Prosinski, 223 Wildwood Ridge, Frankfort, Chapter 7.  
Tari L. De Mauro, 161 East Clark St., Ilion, Chapter 7.  
Patrick J. and Cheri L. Citro, 1503 Redwood Ave., Utica, Chapter 7.  
Michael Khiamdavanh, 1509 Lenox Ave., Utica, Chapter 7.  
Mike J. and Karen L. Doolen, 8120 Seneca Mobile Manor #102, Clinton, Chapter 7.  
Philip and Maryjane Muscarella, 5635 Rome-Taberg Road, Rome, Chapter 7.  
Diane Kane, 4425 Stuhlman Rd. C3, Vernon, Chapter 13.  
Dianne M. Miller, 18 Oswego St., Apt. 4, Camden, Chapter 7.  
James D. Lancette, 6594 Brewer Road, Oneida, Chapter 7.  
Dolores M. Varano, 5988 Cavanaugh Road, Marcy, Chapter 7.  
Dolores M. DesGrosielliers, 297 Spohn Road, Ilion and Daniel L. DesGrosielliers, 82nd Ave., Apt. 2, Ilion, Chapter 7.  
Joseph A. Acquasanta, 110 1/2 Sixth St., Rome, Chapter 7.  
Amanda J. Girven, 78 Myers Road, Lee Center, Chapter 7.  
Eva M. Westcott, 15 Meyers Road, Lee Center, Chapter 7.  
Jodi L. Saracino, 22 North Helmer Ave., Dolgeville, Chapter 7.  
Mehmed and Adisa Mededovic, 1204 Kathleen St., A-2, Utica, Chapter 7.  
Kenneth B. and Beverly J. Firman, 418 3/4 N. Prospect St., Herkimer, Chapter 7.  
Melissa J. McCann, 138 Bono Blvd., Frankfort, Chapter 7.  
Stephanie A. Seely, 111 Richardson Ave., Utica, Chapter 7.  
Dawn Elizabeth Winston, 231 C Hillcrest Manor Courts, Utica, Chapter 7.  
Felicia Marie Greene, 1211 Neilson St., First Floor, Utica, Chapter 7.  
Timothy James Brown, 150 Sale Road, West Winfield, Chapter 7.  
Jeffrey John Henry Bruce, 610 Schumaker Road, Mohawk, Chapter 7.  
John and Eleanor Wellington, 208 Frank Drive, Mohawk, Chapter 7.  
Gary W. Sutch, 933 Mary St., Utica, Chapter 7.  
Rachel Hopkins, 10601 Hulser Road, Lot 49, Utica, Chapter 7.  
Ann Briggs-Lavine, 9559 Harris Road, Lee Center, Chapter 7.  
Alfred M. and Bonnie M. Pierson, 27 Summit St., Middleville, Chapter 7.  
Joseph H. and Viola G. Bordelon, 6778 Route 20, PO Box 103, Bouckville, Chapter 7.  
Michael E. Garramone, 12187 Woodhull St., Forestport, Chapter 13.  
Christopher M. and Rhonda A. Ingham, 1104 Jervis Ave., Rome, Chapter 7.  
Rebecca L. Hoffman, 226A Hillcrest Manor Court, Utica, Chapter 7.  
Donald Murle McLain, 330 Washington Ave., Oneida, Chapter 7.  
Steven James Westcott, 444 Park Drive Manor, Rome, Chapter 7.  
Neil Alexander, 1317 Thorn St., Utica, Chapter 7.  
Rafael Picart, 1243 Hammond Ave., Utica, Chapter 7.

Robert and JoAnn Giotto Beaty, 610 Mapledale Ave., Utica, Chapter 7. Crystal E. Murphy, 331 Second Ave., Frankfort, Chapter 7.

Thomas J. Lisowski, 344 Fenton Lane, Boonville and Liesa J. Lisowski, PO Box 146, Lee Center, Chapter 7.

Patricia E. Denney, 9031 State Route 20, Waterville, Chapter 7.

Dorinda D. Snyder, 10 N. Helmer Ave., Dolgeville, Chapter 7.

Pauline M. Kraeger, 33 Bramblewood Road, Clark Mills, Chapter 7.

Charles R. Sholtzhauer Jr., 41 Seneca Ave., Oneida, Chapter 7.

Dominick A. Cittadino, 1671 Brinckerhoff Ave., Utica, Chapter 7.

Diane Patricia and Donald James Russ Jr., 6176 McLain Road, Oriskany Falls, Chapter 7.

Sarah A. Stemmer, 1106 Rutger St., Utica, Chapter 13.

John K. Fonner, 5001 Clinton Road, Apt. 22B, Whitesboro, Chapter 7.

Paul W. and Sandra J. Maikranz, 9471 Center St., Holland Patent, Chapter 7.

Glenn J. Roback, 39 Kenyon Court, Utica, Chapter 7.

Richard J. and Tracie A. Pasquale, 503 Second Ave. Ext., Frankfort, Chapter 7.

John Purdy, 1787 Holman City Road, Clayville and Cynthia Purdy 6 Ellis Ave., Apt. 5, Whitesboro, Chapter 7.

Peter Stockton, 14 Center St., Ilion and Bonnie Stockton, Prospect Street, Ilion, Chapter 7.

Robert L. Davey Jr., 6453 State Route 233, Rome, Chapter 7.

Marie E. Sasenbury, 615 West Dominick St., Rome, Chapter 7.

Melissa Lawrence, 202 Folts Road, Herkimer, Chapter 7.

John P. and Michele A. Boucher, 209 Winchester Drive, New Hartford, Chapter 7.

Kevin M. Seymour, 8214 State Route 294, Apt. 2, Boonville, Chapter 7.

John J. Kurgan, 25 Henderson St., New York Mills, Chapter 7.

John J. and Stacy L. McNicholas, 123 Cherry Lane, Sherrill, Chapter 7.

Francis Charles Goff Jr., 9738 Campbell Road, Sauquoit, Chapter 7.

Sha-ron Dock, 509 W. Dominick St., Rome, Chapter 7.

Dawn Marie Martin, 424 W. Liberty St., Rome, Chapter 7.

John S. Palmano, 9445 Jaclyn Ave., Sauquoit, Chapter 7.

Francis S. Ziobro Jr., 11 Oakdale Circle, Whitesboro, Chapter 7.

Frank Macri, 9432 Maynard Drive, Marcy, Chapter 7.

Gloria L. Ingham, 6421 Elmer Hill Road, Rome, Chapter 7.

Clifford G. and Valerie D. Hadden, 927 Rt. 29A, Salisbury Center, Chapter 7.

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**Local Headlines**

Wednesday June 20 11:22 AM EDT

OHIO

# Man Charged With Changing Ballots To Bush

A Cleveland elections board employee has been charged with wrongly marking the ballots of five nursing home residents in favor of Geroge W. Bush in last year's presidential election.

**NEWS 5**  
MY NEWS AND INFORMATION

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John V. Jackson, 79, of North Royalton, was indicted Tuesday on five felony counts of tampering with ballots and one count of misconduct.. Each count carries a possible 18-month prison term.

Jackson's lawyer denies that his client did anything wrong.

Bush beat Al Gore in Ohio by about 175,000 votes.

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029722



PA

## 2 McKees Rocks council candidates charge Election Day cheating at polls

Tuesday, November 29, 2005

By Jim McKinnon, Pittsburgh Post-Gazette

Two African-American candidates for borough council in McKees Rocks filed a complaint yesterday, alleging that supporters of their opponent illegally entered voting booths to help voters write in their candidate's name.

Incumbent Democratic Councilwoman Wanda Jones Dixon and newcomer Renee Surgest have asked Common Pleas Court to declare them both winners of the two available council seats.

Though not all write-in ballots have been counted, it appeared yesterday that the write-in candidate, David Rugh, got the most votes with 148.

Mrs. Dixon retained her seat by coming in second. Ms. Surgest missed being elected because of the write-in campaign.

The two women had been among the Democrats' endorsed slate of candidates and both won the party's nomination in the primary election last spring.

Mrs. Dixon said in a letter to the Allegheny County Elections Division that she only learned of the write-in campaign on Election Day, Nov. 8, in a conversation with borough Councilman Keith Schwab.

Mrs. Dixon, in her letter of complaint, said that Mr. Schwab told her, "The Democratic Party is running a Mickey Mouse campaign against you and Ms. Surgest."

Ms. Surgest, in a separate letter, said that supporters of Mr. Rugh temporarily blocked her entrance to the polling place when she went there to vote.

She said that she witnessed a polling judge enter the voting booth with at least one voter.

County Elections Director Mark Wolosik said the petition, filed yesterday at the deadline to do so, is allowed when a candidate feels an irregularity affected the results of the election.

The two women's opponents have until Friday to respond to the petition.

The plaintiffs also charge racism, arguing that the borough's Democratic Party intentionally campaigned against them to prevent black candidates from being elected.

A hearing on the complaint had not been set yesterday.

029723

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*(Jim McKinnon can be reached at [jmckinnon@post-gazette.com](mailto:jmckinnon@post-gazette.com) or 412-263-1939.)*

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029724



FR

**Today**

# Countywide recount may happen again

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## Straight-line ballots don't jibe, Dries says

BY SHAWN A. HESSINGER

*Tamaqua Bureau Chief*

[shessinger@republicanherald.com](mailto:shessinger@republicanherald.com)

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For the second election in a row, the numbers don't add up.

Whether the result of human error or a technical malfunction, a glitch in the results of the Nov. 6 general election in Schuylkill County will likely lead to a recount of all 43,069 ballots cast.

**Archives**

- [Today's News](#)
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At issue is a discrepancy in the number of party-line votes: Ballots are run through the optical-scanning machines at the STS building in Saint Clair twice, and the two reports didn't match, according to Elizabeth J. Dries, director of the county Election/Registration Bureau.

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Dries said she became aware of the problem Election Night when she noticed 271 party-line Republican ballots and 10 Democratic ones had been cast in Eldred Township; however, only 248 people voted.

There could have been at least two reasons for this, she said:

One, halfway through the night she noticed the technician from the county machines' supplier, Elections Systems & Software, Omaha, Neb., was hand-entering data contrary to procedures.

Two, the counting machines have to be reprogrammed for each precinct; perhaps that didn't happen, particularly since one of the county machines broke down and three of the other four malfunctioned at various points in the evening.

The county commissioners, sitting as the county Board of Elections, were planning to convene a special meeting at 8:30 a.m. Friday where they plan to approve the recount. A recount of all the ballots was also conducted in the May primary.

"We want to make sure everything is right," said commissioners Chairman Forrest L. Shadle.

Commissioners Jerome P. Knowles and Edward D. Barket concurred when contacted separately.

029725

All three said they doubted the glitch had effected the outcome of the election significantly, but Barket said in isolated incidences like the passage of an Act 50 referendum in the Blue Mountain School District by just seven votes, the recount could make a difference.

"What went wrong? We don't know," said Barket.

All three commissioners have discussed the need to improve the current vote-tallying situation, but disagree on solutions.

Knowles insists the problem has to do with the technical support being provided by Elections Systems & Software, pointing to the fact that for some time the county had no problems with its machines until the primaries in May when the company sent a subcontractor to provide technical support.

Though the current technician was an employee of the company, both Knowles and Barket expressed a lack of confidence in his performance.

Dries said she didn't stop the technician from hand-entering data because the machines were malfunctioning and she didn't think she had much choice but to proceed.

Barket said he would have to wait to see how the newly reprogrammed machines would handle the recount before deciding whether he believed the machines or the personnel were at fault.

The recount will probably be done Friday or Saturday and Elections Systems & Software has promised to supply two technicians and special reprogrammed boards for the vote tally machines, Barket said.

029726



SWITCH TO TXU ENERGY AND SAVING ON YOUR ELECTRIC

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Monday December 15, 2003

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Monday, December 8, 2003 11:07 pm

## Keeping it Legal - - Authorities confiscate ballots from Alamo election

By Ryan Gabrielson  
Monitor Staff Writer  
[rgabrielson@themonitor.com](mailto:rgabrielson@themonitor.com)

ALAMO – The Hidalgo County Elections Division and District Attorney's Office impounded ballots and other records from Alamo City Hall Monday amid allegations that voting in the run-off election was tampered with.

Much of the concerns centered on mail-in, or early, votes. Commissioner Diana Martinez defeated Alamo attorney Veronica Moncivais by nearly a two-to-one margin for Place 2 on the Alamo City Commission Saturday. The runoff was required because neither Martinez nor Moncivais received 50 percent of the vote in the Nov. 4 general election.

Moncivais and one of her supporters, Joey Lopez, filed complaints with Hidalgo County District Attorney Rene Guerra on Monday about city officials' actions during the voting and ballot counting.

Teresa Navarro, Hidalgo County elections administrator, with an order from Judge Aida Flores of the 398th district court, removed a box of mail-in and regular ballots. The materials will be examined as part of a criminal investigation, Navarro said.

An elections clerk and Hidalgo County Sheriff's deputy also participated in the seizure.

Throughout the runoff there have repeatedly been complaints called in to the elections division, Navarro said. The seizure Monday was triggered by several concerns.

"If there is just the slightest indication that an election is compromised," an investigation is warranted, Navarro said. "The city of Alamo has found itself in an unfortunate situation."

Last Thursday the election's presiding judge, who oversees voting, resigned after it was discovered he had authored and distributed a flier supporting Martinez.

Among the complaints issued by Moncivais were that early, mailed in, ballots may have been opened before official counting began and that Alamo Mayor Rudy Villarreal had access to parts of city hall where voting was taking place. Both Villarreal, who has openly supported Martinez, and Alamo City Secretary Margot Saenz have denied any wrong doing.

"On (Dec.) 5, 2003, while in the city secretary's office, I noticed an open early mail-in ballot, and when I questioned Margot Saenz about the open envelope, she informed me that the main man had delivered the said ballot open," Moncivais said in a sworn affidavit.

"As we were talking to her, one of the city's mail men, (Commissioner) Robert de la Garza, arrived at her office and I asked him if they had delivered any open main-in ballots. Mr. De la Garza then informed me that no mail-in ballots had been delivered open," the candidate's affidavit said.

General voting for the commission runoff was Dec. 6. Saenz did not immediately return a call for comment from The Monitor on Monday.

De la Garza was reelected to the city commission in November; four years ago



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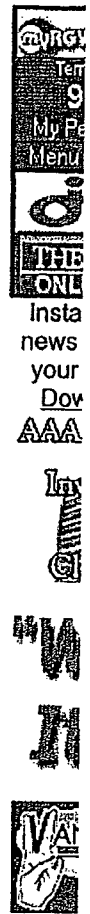
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he shared a campaign ticket with Villarreal and Martinez. Some of the allegations focus on Villarreal's visit to city hall late Saturday afternoon as residents continued to vote and ballot counting had begun. The mayor and city secretary said he came in to fill out a Texas Municipal League conference registration form, which was already a day past the early registration deadline, and to check his mail. Lopez said in his affidavit that he saw Villarreal in Saenz's office going over a list of Alamo residents that showed who had voted and that there were open mail-in ballots beneath the mayor's right arm. "When I questioned what he was doing, I was told by the city secretary, 'He's the mayor, he can be here if he wants to.'"

"Oh, he's lying," Villarreal said. "There was no list of voters." Lopez had also said Saturday night that Villarreal left without any mail, a point the mayor denies.

"If that's the biggest complaint they have got, they've got nothing. If there was anything going on I think I would have locked the door," Villarreal said. Additionally, Villarreal's car was parked Saturday in the city hall's lot. Too close, Moncivais said, for the elected official. When the concern was brought to Saenz, the city secretary went outside and moved the mayor's car.

"My complaint to her and the police was that she should have been inside the building overseeing the election and the mail-in ballots and not being the mayor's personal servant," Moncivais' affidavit states. The mayor said Moncivais' complaints have more to do with the election's outcome than with anything he or Saenz are accused of doing. "She's a sore loser, when you lose by that many votes," Villarreal said. The investigation will be conducted by the District Attorney office and should be done quickly in about six weeks, Navarro said. "The residents of Alamo deserve that," she said. Ryan Gabrielson covers Pharr, San Juan, Alamo and general assignments for The Monitor. You can reach him at (956) 683-4462.



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Posted by: George Metaxas, 12/9/03, 4:34 p.m.  
Judge throws out election fraud case

TN

By George Brown

A judge threw out a court case over an election controversy Tuesday. But the man who filed the lawsuit still insists someone may have tampered with election results. John Willingham alleges fraud and uncounted votes. He was in court Tuesday asking a judge to force the election commission to turn over raw data from each voting machine. But after two hours in court, the problem lay in the proof. And the judge said Willingham had none.

The allegations center around the recent city mayoral election. Willingham says there were indications of fraud and voting machines that malfunctioned, perhaps playing a part in his 45,000 vote loss to mayor Willie Herenton. Willingham said, "It caused me a great deal of concern. It actually caused me to go into hibernation for a day or two." Willingham says exit polls at one precinct showed he got 43 votes, but only 12 were officially tallied. Asked if he thought there could be a conspiracy to fix elections, he said he wouldn't rule it out. "There is a lot of money and power invested by constituents of insiders in this city who want not want to see a change."

Willingham's attorney said he might be able to prove their allegations if the election commission would turn over data it has withheld. The election commission however said the requests were too broad and some information confidential. Attorney Robert Spence said, "It's one thing to sit around the coffee table and make wild allegations. It's another to file a lawsuit in a court of law."

Willingham said his suit was not meant to benefit him, but to clear the air over elections. "It's for the people of Memphis-Shelby County if there is a wrong we need to know it and if there is a hole in the dike we need to plug it." Chancery Judge Walter Evans however felt there was no proof of fraud and threw the case out.

In the hall outside the courtroom, Willingham told me he feels part of the problem is voters don't get a receipt of how they voted. That will change however in two years when federal laws will require such receipts.



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WI

# No vote fraud plot found

## Inquiry leads to isolated cases, Biskupic says

By **STEVE SCHULTZE**  
[sschultze@journalsentinel.com](mailto:sschultze@journalsentinel.com)

Posted: Dec. 5, 2005

F.B.E.A.

The nearly yearlong investigation into voter fraud in 2004 has yielded no evidence of a broad conspiracy to try to steal an election, U.S. Attorney Steve Biskupic said Monday.

He predicted that perhaps "a couple of dozen" isolated cases of suspected fraud might be charged, and he said that sloppy recordkeeping by election officials was a key impediment to proving such cases.

Nothing in the cases that his office has examined has shown a plot to try to tip an election, Biskupic said during a meeting with Journal Sentinel editors and reporters.

Critics had raised such fears of partisan voter fraud schemes in the election aftermath. But Biskupic said, "I wouldn't say that at all."

He said, "We don't see a massive conspiracy to alter the election in Milwaukee, one way or another."

Biskupic, a Republican whom President Bush appointed in 2002, and Milwaukee County District Attorney E. Michael McCann, a Democrat, announced a joint effort to investigate allegations of illegal voting in January.

That followed Journal Sentinel stories on widespread problems in Milwaukee, including flawed voter counts, votes cast from invalid addresses, outdated poll lists and discrepancies between the number of ballots cast and voters listed at dozens of polling places.

The newspaper found similar problems elsewhere in the state.

Four of the 18 people accused of felonies in the investigation have been convicted, officials said Monday.

Here is the breakdown of cases:

- Federal prosecutors have charged 14 people: 10 felons with voting illegally and four people with double voting.

Four of the felons accused of illegal voting were convicted, one was acquitted and five cases are pending, Assistant U.S. Attorney Rick Frohling said.

None of the four people charged with double voting has been convicted. Charges against one person were dismissed because of mental incompetence, one person was acquitted, one trial resulted in a hung jury, and one person who agreed initially to plead guilty now wants a trial, Frohling said.

Two of those charged with double voting were driven to several polling places in the same van, but the driver hasn't been identified, and no evidence of an organized conspiracy has been uncovered, Frohling said.


- McCann's office has charged four people with felonies in Milwaukee County Circuit Court. Two people affiliated with the Association of Community Organizations for Reform Now were charged with filing false voter registrations, and two felons were accused of illegal voting. None of those cases has been resolved.


Biskupic said he had hoped to complete his portion of the investigation this year to avoid dealing with such matters in 2006 - another election year.

<http://www.jsonline.com/news/metro/dec05/375572.asp?format=print>

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12/6/2005

He said, however, that the investigation will likely spill over into next year, which will feature elections for governor, Congress and most of the state Legislature.

Biskupic declined to estimate when his part of the inquiry might be done.

Assistant District Attorney David Feiss said the district attorney's office also likely won't complete its inquiry this year.

Feiss, too, wouldn't say how much longer the investigation would last.

Biskupic said recordkeeping problems have been rampant.

He said that jurors interviewed after acquittals told prosecutors the record problems created doubt as to whether fraud had occurred.

"I don't know how you are going to prove a case when there is no paper trail," Biskupic said.

In addition, he said, it was "extremely difficult" to prove that felons ineligible to vote did so intentionally.

State law bars felons who haven't completed probation or parole from voting.

Defendants have argued that they didn't know they were barred from voting as felons, Biskupic said.

"Once people hear that argument can get them off in front of a jury, you tend to hear it more," he said.

## Partisan split

The 2004 vote problems took on added significance because of the close outcome of the presidential election in Wisconsin. Democrat John Kerry beat Bush by 11,000 votes, one of the closest margins in the country.

Republicans have argued that fraud appears to be rampant in Milwaukee and that stricter controls must be enacted.

Democrats have said that the main problem is clerical shortcomings, not fraud.

That only 18 voter fraud cases have been charged doesn't mean it's not a major problem in Wisconsin, state Republican Party Chairman Rick Graber said.

"For anyone to sit back and say our election system doesn't have problems, that is just blatantly false," Graber said. "The questions raised in 2004 still haven't been answered."

He criticized Democratic Gov. Jim Doyle for vetoing legislation that would have required photo identification at the polls.

Milwaukee Mayor Tom Barrett, a Democrat, said the results of the investigation confirm his view of a year ago, that there were only isolated instances of fraud.

"Initially, there were people painting this picture of some sort of conspiracy where there were bands (of scammers) getting together to try to defraud the system, and that obviously has not happened," Barrett said.

Barrett said he supports prosecution of lawbreakers and is critical of state officials, who said they're unlikely to complete a statewide voter list in time for April elections.

Biskupic said he worried that cases of voter fraud could spawn a partisan battle, in which the losing side perceives that the winner had some unfair advantage and becomes "more inclined to do something" illegal to even the score in the next election.

From the Dec. 6, 2005, editions of the Milwaukee Journal Sentinel  
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Pittsburgh Post-Gazette (Pennsylvania)

December 17, 2000 Sunday TWO STAR EDITION

**SECTION:** TABS, Pg.2

**LENGTH:** 2881 words

**HEADLINE:** CHAPTER ONE;  
THE CAMPAIGN BEGINS

**BYLINE:** JAMES O'TOOLE, POLITICS EDITOR, POST-GAZETTE

**BODY:**

"I'm a uniter, not a divider," George W. Bush frequently reminded us.

After the longest, most expensive and, arguably, most unpredictable presidential campaign in history, the Texas governor, and, at long last, president-elect, will have ample opportunity to prove that.

He will take the oath of office to preside over an electorate divided evenly between its preference for him and his chief opponent. His ascension follows an election that reflected the nation's sharp divisions along lines of race, gender and geography.

It was an election waged in the context of a decade-long economic boom that seemed to have anesthetized most of the country to the toxic partisanship and bitterness that had consumed the political classes of Washington through impeachment and government shutdowns.

One of the prime arguments for the candidacy of the affable Texan was his vow to shift the tone in Washington, to discourage the scorched-earth tactics that seemed to make every Washington political dispute degenerate into litigation.

It will not be easy, as Bush takes office after a post-balloting brawl replete with mutual charges of intimidation, illegitimacy and election theft. The path to confirmation of his crucial Florida victory became a full-employment program for lawyers.

But at least the equipoise that propelled this election from the ballot boxes to the courts was not the product of passionate ideological battles or deeply polarizing personalities. Policy differences were confined to a relatively narrow slice near the center of the political spectrum.

Bush proclaimed himself a conservative, but a "compassionate" one, and he avoided the ideological militancy that had sent Newt Gingrich's negative numbers soaring. Gore relied on populist rhetoric, but, to the occasional frustration of more liberal members of his party, advanced the policies of a centrist New Democrat.

From the perspective of arithmetic, the division in Election 2000 is clear. The new president captured the White House with a bare majority of 271 electoral votes, while losing the popular vote by a small margin. He will work with a Congress similarly split down the middle: a 50-50 Senate; and a House in which his own party is clinging by its fingernails to a five-seat advantage.

The stage for that shaky victory was set by a one-vote margin at the U.S. Supreme Court, overruling a one-vote decision by Florida's high court.

But all this division may be more of a matter of numbers than of conflicting beliefs. In the face of the major parties' ideological evolution and the competition by two relatively uncharismatic candidates trying to appeal to the middle, many voters simply seemed to have a hard time making up their minds.

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## CHAPTER ONE; THE CAMPAIGN BEGINS Pittsburgh Post-Gazette (Pennsylvania)

## The campaign begins

President Clinton ousted the father of the Texas governor in 1992, but the 1990s brought plenty of good news to the GOP, as well. Republicans took over the Congress for the first time in 40 years in the midterm election of 1994. GOP strength grew in state legislatures across the country. Nearly two-thirds of Americans lived in states with Republican governors.

But as the decade wore on, most of the good news for the party came from outside Washington. In 1995, the Gingrich-led GOP partisans, emboldened by their victory the previous year, shut the federal government down in a budget face-off with Clinton. They blinked before the president did, and they paid for it at the ballot box.

In 1996, Clinton coasted to re-election, and the strength of the economy that would boom on through his second administration was a big plus for Gore.

The downside of Gore's Clinton ties was just coming into view in the last weeks of the 1996 campaign, with charges of fund-raising abuses by the Democrats.

Still to surface were names such as Monica Lewinsky, Linda Tripp and Kenneth Starr. The impeachment scandal would tarnish Clinton's place in history and serve as a drag on Gore's chances to succeed him. But the issue was a double-edged sword, as congressional Republicans found when they lost seats in 1998 as their efforts to campaign on the scandal turned off many voters.

To many members of the Republican establishment outside Washington, Texas Gov. George W. Bush was seen as the antidote to that politically poisoned atmosphere. The Texas governor didn't have the longest resume in GOP politics. But he had cultivated a reputation for attracting Democratic support on the way to his landslide election to a second term. As the son of the former president he had instant name recognition.

Through 1999, Bush continued to attract support from party leaders, notably his fellow governors and the deep pockets of the GOP's big contributors. He was well on his way to amassing the war chest that would allow him to decline federal matching funds for the primary season. That, in turn, enabled him to confront his competition unfettered by the state-by-state limits on primary spending that are imposed on candidates who accept the federal campaign aid.

## The Iowa edge

Over the last three decades, Iowa has become the starting blocks for the presidential race.

In 1972, the first year of the early February Iowa caucus schedule, the returns were received without fanfare in a back room behind the Democratic Party's downtown Des Moines office.

Since then, the caucuses have grown into a gargantuan production attracting millions of dollars, hundreds of reporters, and candidate pilgrimages that start more than a year in advance.

That's the process that gave former President George Bush what he described as "big mo" in 1980 — and just short of 20 years later, the younger Bush moved quickly to set up the most extensive, sophisticated organization the state had ever seen.

The Iowa caucus process has long been controversial. Why, its critics ask, should this atypical homogenous state have such an outsized influence on the selection of the president? But the caucuses are the epitome of fairness and rationality compared with an even earlier Iowa event — the straw poll — that assumed a crucial role in winnowing the GOP field for 2000.

In the summer of 1999, Bush's high poll numbers and financial advantages were clear, but he had yet to be tested by voters outside his state. Many observers still saw the GOP contest as relatively fluid — so wide open, in fact, that it had attracted a dozen formal or informal candidates. They included the millionaire Steve Forbes; Pat Buchanan, the conservative who had been a force in the previous two GOP nomination battles; Elizabeth Dole, the former transportation secretary and spouse of the party's last nominee; and, in a gift to political cartoonists and late-night comics everywhere, former Vice President Dan Quayle.

As a fund-raising and party-building tool, the Iowa GOP appropriated the state fairgrounds in August 1999 for a presidential straw poll. Any Iowa Republican could vote so long as he or she bought a \$25 ticket.

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Bush won big.

Buchanan would soon migrate to the Reform Party. Quayle and former Tennessee Gov. Lamar Alexander, both of whom had banked on grass-roots organizations in Iowa, dropped out as well. Dole, her campaign starved for funds, would soon follow. The straw poll went a long way toward performing the winnowing chore that the caucuses themselves had performed in previous years. Before a single official vote was cast, the potential GOP field was cut in half.

Gore goes populist

Gore's supporters had started his Iowa groundwork even earlier.

He had skipped the caucuses during his abortive presidential run in 1988. But he devoted plenty of attention to them this time round. Throughout his vice presidential tenure, Gore cultivated the state's activists, raised money for its Democratic legislators, sent Christmas cards all over the state.

Several Democrats had made noises about running for the Democratic nomination. But in the end, the only one to challenge Clinton's heir apparent was former Sen. Bill Bradley of New Jersey. In the Senate, Bradley had compiled a mainstream centrist record. But in some respects, he ran against Gore from the left, particularly in his call for a system of tax credits to allow universal health care coverage.

Bradley criticized the Clinton-Gore health care record. He mocked Gore's wonkish immersion in the details of policies across the range of government. Instead, Bradley promised to concentrate his presidency on a few Big Ideas, such as improved race relations and universal health care.

Despite Gore's long cultivation of the state, Bradley clearly thought he could sneak up on the vice president in the caucuses.

Gore, meanwhile, had suffered continual criticism of his campaign organization and persona throughout the summer of 1999.

He tried to reinvent his campaign by moving his headquarters from the lobbyist lairs of Washington back to his former political base in Nashville.

This symbolic return to his roots would not be requited in electoral votes there the following fall, but it seemed to pay off in the short term. On the stump, Gore became a more aggressive, effective candidate.

Gore made subtle adjustments in his apparel to complement his new sleeves-rolled-up campaign style. Mixed with the Washington uniform of blue suits and white shirts were fashion-forward earth-toned suits along with khakis and jeans.

Meanwhile, Bradley proved a surprisingly maladroit candidate. In a Des Moines debate just three weeks before the caucuses, Gore attacked his challenger for voting against rural flood relief. Bradley wasn't able to rebut the criticism, even though Gore had seized on Bradley's vote against a single amendment to an overall relief bill that Bradley had supported.

Days before the Iowa election on which he had waged so large a bet, Bradley's attempts to get his message out were obscured by reports that he had suffered a recurrence of an irregular heart beat. The condition was not life-threatening physically, but it was nearly fatal politically.

Gore, buoyed by newfound energy — along with the backing of the union and Democratic Party establishments — surged ahead.

Enter John McCain

As the caucuses and primaries drew closer, Bush's evident strength had allowed him, at least for the time being, to avoid stepping on one of the traditional land mines of the nominating process. Former President Richard Nixon's widely noted advice to Republican candidates was to run to the right during the primaries and tack back to the center in the general election. Bush resisted the temptation to cater to the right.

Through the wintry early weeks of 2000, Bush projected a big-tent version of Republicanism. At one of the final Iowa debates, he shrugged off the taunts of conservative candidate Gary Bauer, who demanded that Bush pledge to make

opposition to abortion a litmus test for Supreme Court nominees.

Bush's sense of political security was due for a reality check.

The same weekend as that debate, Joe Andrew, chairman of the Democratic Committee, was in Des Moines staging a bit of political theater. He led a gaggle of reporters and television cameras across a restaurant parking lot to witness a steamroller labeled, "Bush Tax Cut," steered by a Democrat in a George Bush mask, rolling over a tool box labeled, "Social Security Lock Box."

On its second try, the steamroller managed to shatter the box.

One of Gore's key Iowa organizers shook his head when the scene was described to him. He faulted the skit not for its sophomoric tone, but for its target.

"I think those DNC guys are making a mistake attacking Bush," he said. "I'd be more worried about running against the other guy."

The other guy was Sen. John McCain. Citing a lack of resources, the Vietnam War hero and former POW decided to skip the Iowa competition and instead concentrate on New Hampshire, which would vote a week later.

New Hampshire, like several of the early Republican primaries, permitted crossover voting by independents and Democrats. The Arizona senator had compiled a strongly conservative record, but his appeal crossed party lines.

Some analysts noted that as Bradley's Iowa weakness became increasingly apparent, some of his New Hampshire support from independents migrated not to Gore but to McCain.

That phenomenon proved an omen for the general election. Gore and Bush secured their respective party bases in both New Hampshire and Iowa, as they would in the general election. But for many independents and swing voters, the more attractive candidates were Bradley and McCain.

Gore and Bush came out of Iowa buoyed by landslide victories. Gore would beat Bradley again in New Hampshire, although not by as large a margin. But Bush barely had time to savor his Iowa victory.

Crack in the facade

McCain had spent virtually all his time in New Hampshire. He had carpet-bombed the state with inspirational biographical videotapes. And it paid off. Buttressed by the support of many independents and Democrats, his campaign notched a decisive 18-point victory.

A winning personality and a big-tent philosophy had been among the most powerful engines of Bush's candidacy. Money was another. But until New Hampshire, Bush also had drawn crucial momentum from a sense of inevitability.

For one tense and increasingly bitter month, McCain changed that.

Democratic rules barred any state, except for the traditional gatekeepers of Iowa and New Hampshire, from choosing delegates before March 7. There were no similar restrictions on the Republican side, where several states would choose delegates in the weeks between New Hampshire and Super Tuesday.

The result was that the political and media spotlight temporarily shifted almost exclusively to the GOP side.

Delaware held a little-noticed GOP primary the week after New Hampshire, but the prime focus for the campaigns and the media was South Carolina, where Bush and McCain would face off on Feb 19. By then, every other candidate except Alan Keyes had dropped out of the Republican field.

A chastened Bush now found it necessary to heed Nixon's advice. His campaign shifted to the right in South Carolina. Almost his first stop in the state was Bob Jones University, a citadel of Christian fundamentalism where interracial dating was banned and where a former university president had condemned Roman Catholicism as a cult.

McCain, proclaiming himself a champion of reform, charged around the state giving interview after interview on his campaign bus, the "Straight Talk Express."

Rebounding from New Hampshire, the Bush campaign tried to preempt the challenger's rhetoric as well as his



## CHAPTER ONE; THE CAMPAIGN BEGINS Pittsburgh Post-Gazette (Pennsylvania)

stagecraft. Bush rallies now took place in front of a giant banner sporting his new campaign slogan, "A Reformer with Results." He rode a bus called the "Victory Express." He suddenly embraced the town meeting format that had brought success to both McCain and Gore.

Bare knuckles show

Through the winter, the Republican race had remained fairly civil.

South Carolina changed that. Things got rough fast.

Bush professed outrage at a McCain ad comparing his veracity to Clinton's. McCain was the brunt of e-mail and whispering campaigns charging that he was wavering in his opposition to abortion.

It was the most expensive, hardest-fought primary in the state's history. In the end, Bush rose from the canvas of his New Hampshire defeat to deliver a body blow to McCain's insurgent candidacy. The senator conceded in a remarkably bitter speech, full of indignation and invective at Bush's tactics. It seemed his colorful campaign had run out of gas.

But three days later, Michigan's Republican Party had another primary. Bush's forces felt secure there, in part because of his support from the state's energetic governor, John Engler. But Michigan, like New Hampshire and South Carolina, allowed crossover voting by independents and Democrats.

Since there was no Democratic contest competing for their attention that day, many chose to vote in the GOP primary, most of them for McCain.

It was another sharp-elbowed contest. In a controversial speech, McCain denounced Christian conservative icons Pat Robertson and Jerry Falwell as voices of intolerance. Robertson, himself a former GOP presidential candidate, repaid the favor with thousands of recorded phone calls critical of McCain. McCain's supporters filled the phone lines with calls reminding Catholic voters of Bush's appearance at Bob Jones University.

McCain shocked just about everyone and won Michigan — along with a same-day victory in his home state of Arizona. Recrimination and doubt returned to the Bush campaign.

They would be exorcised by Bush's commanding showing two weeks later.

Until March 7, the nomination fights had been rewarded chiefly in the currencies of momentum and publicity. On March 7, Super Tuesday, the real prize, convention delegates, came to the fore. Sixteen states conducted primaries or caucuses for both parties that day.

The balloting fell on Mardi Gras, and was a fat Tuesday indeed for the well-financed frontrunners who could fight on many fronts simultaneously.

Bush and Gore swept the table. On that day, both parties' nominations were effectively decided.

**NOTES:**

**ONE NATION DIVIDED HOW THE ELECTION OF 2000 UNFOLDED, AND WHAT IT MIGHT MEAN TO AMERICA'S FUTURE**

**GRAPHIC: PHOTO: Eric Draper/Associated Press: ON THE MOVE/TEXAS GOV. GEORGE W. BUSH ENTERED THE CAMPAIGN FLUSH WITH CASH FROM A GOP ESTABLISHMENT THAT SAW HIM AS A PERSONAL BE CANDIDATE UNTAINTED BY THE POISONED POLITICAL ATMOSPHERE IN WASHINGTON. HERE HE DISPLAYS SOME BODY LANGUAGE WHILE BOWLING IN NASHUA, N.H.**

**PHOTO: Charles Krupa/Associated Press: HEIR APPARENT/VICE PRESIDENT AL GORE FIGURED HIS LONG EXPERIENCE AND ECONOMIC PROSPERITY WOULD PROPEL HIM EFFORTLESSLY TO THE DEMOCRATIC NOMINATION. BILL BRADLEY PUT UP A SPIRITED FIGHT, BUT FADED FAST.**

**PHOTO: Charles Rex Arbogast/Associated Press: FULL COURT PRESS/FORMER KNICKS BASKETBALL STAR AND NEW JERSEY SEN. BILL BRADLEY RAN AGAINST GORE FROM THE LEFT, PUSHING "BIG IDEAS" LIKE UNIVERSAL HEALTH CARE COVERAGE. GORE PICKED THEM APART; BRADLEY FOLDED.**

**PHOTO: : Steve Mellon/Post-Gazette: MUGGING MCCAIN / ARIZONA SEN. JOHN MCCAIN, RIDING HIS "STRAIGHT TALK EXPRESS" CAMPAIGN BUS AND PROMOTING POLITICAL REFORM, GAVE**

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CHAPTER ONE; THE CAMPAIGN BEGINS Pittsburgh Post-Gazette (Pennsylvania)

FRONTRUNNER GEORGE W. BUSH FITS IN THE EARLY PRIMARIES. BUSH FINALLY CRUSHED THE POPULAR FORMER POW ON SUPER TUESDAY, THANKS TO HIS OVERWHELMING FINANCIAL ADVANTAGE. THEY PATCHED THINGS UP IN PITTSBURGH, ABOVE.

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## Ex-Legislator Accused Of Vote Fraud

### Faces 7 Felony Counts Of Absentee Ballot Fraud

ADVERTISEMENT



By LYNNE TUOHY  
Courant Staff Writer

August 12 2003

Former Hartford state Rep. Barnaby Horton was arrested Monday and charged with seven counts of absentee ballot fraud - all felonies - in connection with his unsuccessful Democratic primary battle last fall against Kenneth R. Green.

The violations allegedly occurred at the Betty Knox apartment complex on Woodland Street in Hartford, where one resident, Silas Woodward, told investigators Horton sat at his kitchen table as Woodward completed the ballot, and pointed to his own name and that of state Sen. Eric Coleman, another Hartford Democrat, as the boxes to check.

"Against his wishes, Woodward checked the box, thereby casting a vote for Horton," the arrest warrant affidavit states. "Woodward stated he felt compelled to vote for Horton because of Horton's presence while Woodward completed the ballot."

Horton, 34, also was charged with making a false statement to the State Elections Enforcement Commission. In a sworn affidavit he supplied to the commission dated Sept. 6 - four days before the primary - Horton stated, "At no time did I handle or assist residents with any absentee ballots, nor did I leave with anyone's absentee ballot."

The arrest warrant affidavit alleges that not only did Horton leave the complex with ballots, but also brought along postage stamps and affixed them to the envelopes.

Horton, accompanied by his lawyer, Austin J. McGuigan, and several family members, turned himself in to the chief state's attorney's office in Rocky Hill Monday morning. He was released on his written promise to appear in Hartford Superior Court Aug. 25. Neither Horton nor McGuigan returned phone calls seeking comment.

Horton is perhaps best known as the lead plaintiff in the landmark Horton vs. Meskill lawsuit that led to the 1977 Supreme Court ruling that forced the state to better equalize school funding.

The chief state's attorney's office's recently formed public integrity bureau is handling the prosecution.

Hartford Democratic Chairman Noel F. McGregor said Horton's arrest "sends a message that you have to play by the rules."

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"I'm not the type of person to pour salt in a wound, but people have to understand that you can't break the law," McGregor said. "There're no shortcuts."

Horton, a lawyer, was serving his second term as state representative when redistricting forced him into a primary battle with four-term Democrat Green, of Bloomfield. Their respective districts were now one. It was Green who launched the elections enforcement commission investigation last October, with allegations that Horton was present when absentee ballots were being completed and that he also took possession of some absentee ballots. The residents interviewed by investigators bore out Green's allegations.

Frances Huckaby said she was in Woodward's apartment when Horton was there, and also filled out her ballot in his presence, though she shielded it so no one would see which boxes she checked. Horton took the sealed ballot form from her. Huckaby said she asked fellow resident Rosalind Sailor why she was taking Horton door to door. "Sailor reportedly responded that people let you in if you're with someone from the building," the affidavit states.

Another resident, Alma Daigle, told investigators that shortly before the primary, Horton knocked on her door and asked if she had received her absentee ballot. Daigle said she had, but needed help completing it because of her poor vision.

Daigle said Horton left, but returned about half an hour later with another resident. Horton then explained the ballot to Daigle, she said, and read the names of the candidates. Daigle told him she always voted for the white candidate, according to the affidavit. Horton, who is white, pointed to the candidate she wanted, and she checked the box. Horton also offered to mail the ballot and left Daigle's apartment with it, she told the investigators.

Sailor gave conflicting statements to investigators on different occasions, but repeatedly said she did not see Horton handle absentee ballots. When investigators contacted Sailor again in December, she refused to cooperate. "If you want to do something to Barnaby Horton, you'll have to do it on your own. I don't want to be bothered anymore," the affidavit quotes her as saying. She also said "it seems like a witch hunt."

Chief State's Attorney Christopher L. Morano begs to differ.

"The independence of the voter when they're making a decision is paramount in the way we conduct elections," he said Monday. "The thrust and intent of the law is to make sure the voter is making the decision of their own volition, and not with the sense that anyone is twisting their arm."

Green said he was not surprised by the arrest.

"These actions were really quite extensive and quite a violation," he said. "I think that these things need to be investigated and dealt with to the fullest extent. We need to have the public trust."

In September, according to the affidavit, Horton and his lawyer at that time, R. Bartley Halloran, both broached the subject of reaching a "settlement" with elections enforcement lawyers. Halloran told them Horton "could not unequivocally state that he was not present when a voter or voters were completing their absentee ballots," the affidavit states.

The state lawyers invited Halloran and Horton to provide the commission with an explanation or defense for Horton's conduct, but said they heard nothing back.

Morano said the investigation is ongoing, but that he doesn't anticipate additional arrests.

The charges include four counts of unlawful possession of another's absentee ballot and three counts of being present, as a candidate, when absentee ballots were being filled out. All seven counts are Class D felonies, each punishable by up to five years in prison and a \$5,000 fine. The false statement charge is a Class A misdemeanor, punishable by up to a year in jail and a \$1,000 fine.

It's not clear what impact, if any, a felony conviction would have on Horton's license to practice law in the state.

Horton's is the first major absentee ballot scandal to hit Hartford since the 1996 arrest of former 4th District state Rep. Edwin Garcia, D-Hartford, and six campaign workers. Garcia ultimately resigned his state office and from his job as a Hartford police sergeant. He was sentenced to a year of home confinement, which a judge lifted after five weeks, and two years' probation after pleading guilty to three felony counts.

Courant Staff Writer Oshrat Carmiel contributed to this story.

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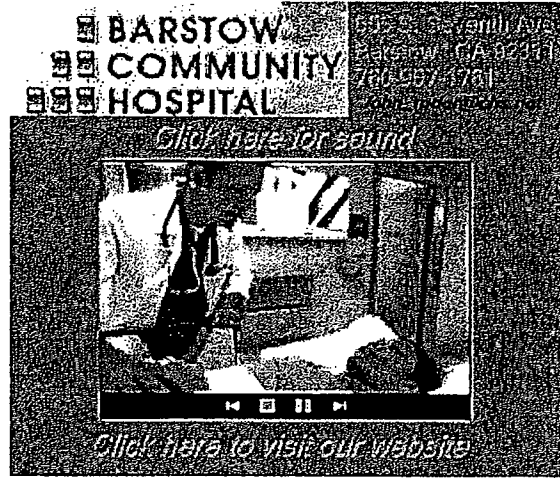
Thursday, November 3, 2005

## Voting rolls go unchecked in San Bernardino County

CA

By KATHLEEN STINSON

Staff Writer



County elections officials have no idea how many non-U.S. citizens may be voting because no one checks voter registration for proof of citizenship.

The main way elections officials discover non-citizens who vote is through tips from citizens, said Chief Deputy Registrar Donna Manning.

When filling out the voter registration form, each voter signs a declaration, under penalty of a felony conviction, that he/she is a U.S. citizen, 18 years of age or older on or before the next election and not in prison or on parole. The citizenship information is only checked randomly.

Once a year the registrar of voters office "bumps" its registration files up against the jury service forms filled out by people called for jury duty, Manning said. The two forms are compared for citizenship discrepancies.

"Out of a thousand forms, you get a very small percentage -- one or two -- about a handful a year that don't match," Manning said, adding some say they are not citizens to get out of jury duty.

Assemblywoman Sharon Runner, R-Antelope Valley, said she "absolutely believes" voters should have to provide proof of citizenship when registering to vote. With people being paid to register voters, this leaves open the potential for voter fraud, Runner said.

The issue of voter fraud was prominent in the 1996 congressional race between Rep. Robert Dornan and Loretta Sanchez in Orange County. An investigation by Secretary of State Bill Jones revealed that Hermandad Mexicana Nacional had registered 490 documented non-citizens to vote, 303 of which voted in the election.

Assemblyman Mark Wyland, R-Escondido, introduced a bill in the past legislative session to require voters to provide proof of citizenship when registering to vote. Assembly Bill 934 failed to pass in the 2005 Legislative

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session but is expected to come up again in the upcoming session, Runner said.

The Registrar of Voters office also checks for duplicate voter registrations within the county and against a 57-county statewide list maintained by the Secretary of State's office when the registration form is initially entered into the system.

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029743

12/6/2005

# Modbee.com

## Man charged with vote fraud

CA

By ERIC STERN  
BEE CAPITOL BUREAU

SACRAMENTO — A Tracy man faces five felony counts of forging voter registration cards for the November 2004 election, the California secretary of state's office said Wednesday.

It was the second time prosecutors have filed registration-fraud charges related to last year's election in San Joaquin County, where the Democratic and Republican parties invested tens of thousands of dollars to increase voter rolls.

The effort was tied to the hotly contested state Senate race between Democratic Sen. Mike Machado of Linden, who edged out Republican challenger Gary Podesto, the former mayor of Stockton.

"This past election was really rampant" with suspicious voter registrations, said Deborah Hench, the top election official in San Joaquin County.

She alerted state election-fraud investigators about her concerns last year as 30,000 new voters were registered between the June primary and the November general election.

Authorities said they don't believe that any faked voter-registration cards led to fraudulent votes, but orchestrating phony voter registrations is a crime.

Political parties or their contractors generally pay between \$5 and \$8 for each registration card filled out.

Hench said her office flags registration cards that don't match addresses, birth dates and other information.

"As long as parties pay for registration, we get some made up," Hench said.

Mathew Cross, 20, of Tracy, could face more than five years in prison, said Scott Fichtner, chief deputy district attorney in San Joaquin County. Cross is scheduled to be arraigned June 23.

In interviews with state investigators, Cross said soliciting citizens to register was hard work and that forging cards increased his commissions, according to a news release from Secretary of State Bruce McPherson's office.

Cross did not return a phone call seeking comment. He is on probation after pleading guilty last year to felony marijuana possession, the district attorney's office said.

Bonnie Fetters, 47, of Stockton pleaded guilty in October to voter registration fraud. She was sentenced to 30 days in jail and three years of probation, the district attorney's office said.

**Bee Capitol Bureau reporter Eric Stern can be reached at 916-326-5544 or [estern@modbee.com](mailto:estern@modbee.com).**

Posted on 06/16/05 00:00:00

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6/17/2005





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# Voter cards suspect

## County thinks some registrations are fake

By David Siders  
Record Staff Writer

Published Wednesday, March 24, 2004

San Joaquin County has warned the state it is examining 1,500 voter-registration cards and suspects several are fraudulent, Registrar of Voters Deborah Hench said Tuesday.

Hench said the cards are being examined after elections officials discovered a new registration card with an incorrect address for someone who already had correctly registered to vote.

And several registration cards in the batch have signatures that look similar, Hench said.

The cards were received after the deadline for voting in the March 2 primary and therefore did not affect that election, she said.

The number of registration cards sent to the state Elections Fraud Investigations Unit could be much fewer than 1,500. Hench said her office will determine which ones to send.

The review comes as elections officials continue counting provisional ballots cast March 2.

"It just causes more work for us," Hench said.

::: Advertisement :::

Meanwhile, in a separate fraud investigation, a Stockton woman pleaded guilty Tuesday to a misdemeanor charge of forging six registration cards in 2001.

Rhonda Kenya Felix, 29, was paid \$4 for each Republican voter she registered, according to court documents. Felix and five others in 2001 were the subject of a fraud

CA



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investigation into the registering of Republicans in San Joaquin County.

In the case, David Vance, the owner of the company that hired Felix, said Felix was paid \$633 for one batch of registration cards but was not paid for a second batch, because it appeared she forged the cards, court documents said.

Felix declined to discuss the case.

"I don't want my name in the paper," she said.

Vance said his company, Vance Petition Circulators of Stockton, pays workers to register voters, often outside grocery and department stores. The completed forms are then given to the office of the registrar of voters.

The company hasn't had fraudulent registration cards returned to it since Felix did so in 2001, he said.

"Some of the people that have gone to jail for this have done it for, like, 10 bucks," he said.

Hench said paying collectors per registration encourages fraud. The practice, however, is legal.

"I think (Vance) hires people that are not always on the up and up," she said.

Vance said he hires collectors by word of mouth. Most collectors want to get accurate names on registrations, not collect more money, he said.

"You've got to give everybody a shot, as long as they've got some kind of intelligence," he said.

Felix was sentenced in San Joaquin County Superior Court to 30 days in jail.

\* To reach reporter David Siders, phone (209) 943-8580 or e-mail [dsiders@recordnet.com](mailto:dsiders@recordnet.com)

**"It just causes more work for us."**

-- Deborah Hench,

San Joaquin County



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03/25/2004

NEWS  RELEASE

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*California Secretary of State Bill Jones*

CA

BJ00:36

FOR IMMEDIATE RELEASE  
Thursday, March 9, 2000

Contact: Shad Balch  
Beth Miller

**Secretary of State Investigation Nabs Husband and Wife  
for Elections Fraud**

*Couple Charged With Submitting Forged Voter Registration Cards*

STOCKTON --- Investigators with Secretary of State Bill Jones' Elections Fraud Investigations Unit (EFIU) and prosecutors from the San Joaquin County District Attorney's office today arrested Daniel Williams, Sr. and Carolyn Williams, husband and wife, on charges of submitting fraudulent voter registration cards to the San Joaquin County Registrar of Voters.

The couple, who worked for Green Petition Management and Campaign Services, allegedly submitted eight voter registration cards containing forged signatures to the San Joaquin County Registrar of Voters. After examining the cards, the county registrar suspected fraud and requested that Secretary of State Bill Jones' EFIU open an investigation.

"100 percent participation with zero tolerance for fraud – that's been my message consistently for the last five years," said Secretary of State Bill Jones. "People think that in a state as large as California, it might be easy to get away with a small-scale criminal violation of elections law. But my message can't be more clear: every single allegation of elections misconduct will be investigated and prosecuted to the fullest extent of the law," added Jones.

The secretary of state EFIU investigators and prosecutors with the district attorney's office arrested Daniel and Carolyn Williams this morning on charges of violating Elections Code Section 1801 and Penal Code Sections 115a and 470, submitting a false affidavit and forging signatures. The pair will be held in custody until their arraignment tomorrow at the San Joaquin County Courthouse at 1:30 p.m.

Since established by Secretary Jones in 1995, nearly 200 cases of elections fraud have been referred by the secretary of state's EFIU to county district attorney's for prosecution, and in 1999, 61 percent of cases referred have resulted in convictions.

## WH woman accused of voting fraud

FL

In an investigation by the State Attorney's Office, Amber Moye, of Winter Haven, was found to have "cast a fraudulent ballot."

According to a complaint affidavit, Moye " knowingly voted a fraudulent ballot in the November 2003 election held in the town of Dundee after being advised by the Polk County Supervisor of Elections that it was a felony violation to vote if she was not a resident of Dundee."

The Polk County Supervisor of Elections Office had received a telephone request for an absentee ballot for Moye, who reportedly had a Dundee address. The ballot material was sent and then returned reflecting a Winter Haven forwarding address.

Barbara Osthoff, assistant supervisor of elections, advised that she contacted the clerks office for Winter Haven in an attempt to confirm the Winter Haven address of Moye. Based on the new address being outside of the Dundee city limits, the ballot was "rejected as illegal."

Moye stated, in the investigation, that she voted because that was where she was registered and she never changed the registration because she was only temporarily living in Winter Haven. Moye said that she would be moving back to Dundee within 30 days.

Voting fraud is a third-degree felony, punishable of up to five years in jail, according to Assistant State Attorney Chip Thullberry. In this instance Moye will not serve jail time but will instead have a pre-trial intervention that if she completes charges will not be filed against her.

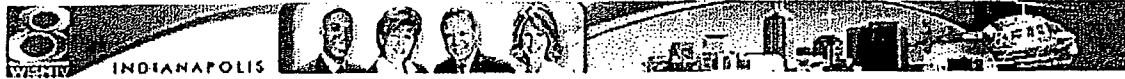
According to Thullberry the pre-trial intervention is a diversion program that generally lasts 18 months and is a contract saying that the person, in violation of the law, agrees to a contract that they will stay out of trouble.

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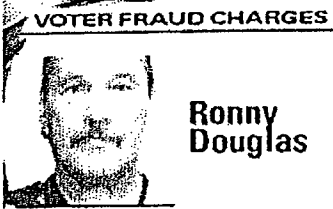
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March 11, 2004

**Firefighter Arrested, Released for Illegally Voting**

*JW*



**VOTER FRAUD CHARGES**

**Ronny Douglas**

A firefighter accused of illegally voting was released on bond Thursday. Police say 58-year-old Ronny Douglas voted from an Anderson address while actually living 7 miles away in Pendleton.

Authorities say Douglas registered under the address of his rental property in Anderson. His wife told investigators that they've lived in Pendleton since their 1992 wedding.



Madison County Voters Registration Records show Douglas using the Anderson address for voting since 1984. He also allegedly filed fraudulent applications for absentee ballots in the 2000 and 2002 elections.

Douglas faces perjury charges.

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## 6 face voting-related charges

LA

By BRUCE SCHULTZ

Acadiana bureau

LAFAYETTE -- A federal grand jury has accused St. Martinville City Councilwoman Pamela Champagne Thibodeaux of conspiracy and submitting false information for voter registration, while St. Martin Parish authorities have charged five people with voter irregularities.

The four-count federal indictment, returned last week but unsealed Tuesday, accuses Thibodeaux of conspiracy and three counts of submitting false information to register to vote during her 2002 re-election campaign for the District 3 seat on the St. Martinville City Council.

"It's never going to end," she said Tuesday morning before referring any questions to attorney Gerald Block of Lafayette.

Block declined to comment.

Under state law, Thibodeaux will not have to step down from office unless she is convicted of any of the four felony charges.

In state court, Assistant District Attorney Chester Cedars said he has charged Lillian Bernard, Thibodeaux's brother Burton Champagne, Albert Decuir, Reid Foti and Hardy "Joey" Theriot, former St. Martinville Section 8 housing administrator. Cedars said more people will be charged, but he would not say who they will be.

The federal indictment claims Thibodeaux persuaded three people, Stacy Richard, Carrie Fruge and Decuir, to fill out voter registration cards on March 5, 2002.

"It was part of the conspiracy that, in order to increase the likelihood of being elected to the City Council ... Thibodeaux would ask persons living in the St. Martinville, Louisiana, area but not in her district to agree to falsely register in her district," the indictment reads.

She brought voter registration cards to the co-conspirators and asked them to fill out the cards with everything but their address, the indictment indicates, and Thibodeaux wrote the address of 320 Oliver St. in St. Martinville for Richard, Fruge and Decuir. None of the three are charged in the federal case, which has been assigned to U.S. District Judge Richard Haik.

029750

Cedars said Bernard is charged with two misdemeanors for voting on April 6, 2002, and on May 4, 2002, knowing she was unqualified to vote in the District 3 race.

Decuir and Champagne are each accused of a felony for filing their voter registration cards with an address within District 3, and two misdemeanors for voting in the primary and runoff with improper registrations, Cedars said.

Foti, an electrician for the city of St. Martinville, is accused of two felony counts of filing two false voter registrations, one for himself and one for Bernard, the prosecutor said, and two misdemeanors for voting in the two District 3 elections based on those improper registrations.

Theriot, former director of the St. Martinville Housing Authority, is accused of a misdemeanor for voting absentee in March 2002, knowing he was not qualified to vote in the municipal election.

Cedars said the cases will be vigorously prosecuted.

"It's going to be addressed with the severity of the offenses," he said.

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MA

## Voter fraud in Worcester City Council election being investigated

WORCESTER, Mass. Voter fraud has been alleged in a Worcester City council race.

Candice Mero Carlson lost the November eighth District Two election by 102 votes to Councilor Philip Palmieri.

However Carlson charges that two prominent Palmieri supporters -- bar owner and Worcester magazine publisher Paul Giorgio and Boston lobbyist Paul Pezzella -- voted for Palmieri, although they don't live in the district. And she has asked Worcester District Attorney John Conte to investigate her allegations.

Carlson said her charges are not about changing the results of the election, which she says she clearly lost. She says the state's voter fraud statute carries criminal fines and penalties, and she wants them carried out if the law was violated.

A spokeswoman for Conte told the Telegram and Gazette of Worcester the matter is under investigation.

Palmieri says he is happy with the election results, and says Carlson's complaint is an Election Commission matter.

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K.F. Beg

029752





March 4, 2001

## St. Louis Sees Specter of Vote Fraud

By B. DRUMMOND AYRES Jr.

**S**T. LOUIS, March 3 — When it comes to American cities with a notorious history of election fraud, St. Louis can hold its own. Its political past is replete with instances in which people no longer alive got to vote, not to mention people who never lived.

In last November's presidential election, some voters filed a lawsuit midway through Election Day demanding that voting hours be extended. They said that election officials had permitted polling places to become chaotically crowded, possibly in a deliberate effort to depress the city's heavy black vote.

The hours were extended, then it was discovered that the chief plaintiff in the lawsuit had been dead the better part of a year.

Come Tuesday, the people of St. Louis will head to the polls again, this time to nominate candidates for the April 3 mayoral election. And once again the integrity of the city's voting system is as much at issue as what the various candidates have to say about the city's economic and social problems. Once again, there are bold headlines and live-at-6 broadcasts about scores of bogus registrations, secret grand jury investigations and accusations of blatant race-based disenfranchisement.

"It's the same old never-ending St. Louis story," said James Shrewsbury, a city alderman and veteran of the city's political wars. "It's what happens when you have an old city that insists on hanging on to the bad old political ways. I know. At one point, somebody out there reregistered my long-dead mother."

None of Tuesday's mayoral candidates have been accused of wrongdoing. But there is no shortage of whispering — unsubstantiated — that some of them have supporters who would not hesitate to write down a bogus name or address. There also is plenty of talk — unsubstantiated — that Republican election officials are intent on making it difficult for blacks to vote, while Democratic election officials are intent on making it too easy for blacks to vote.

And, some election officials and political professionals say, there is always the real possibility that some of the fraud and disenfranchisement exists only in the imagination of those who want to make an opponent or another party look bad. Likewise, it is said that some of the most egregious fraud, like registering dead aldermen, may well have been perpetrated by people hired to sign up new voters and paid on a per-person basis.

Whatever the case, this much is certain:

A grand jury is investigating a report by election officials that hundreds of fraudulent names and nonexistent addresses were found on about 3,800 voter registration cards turned in last month just hours before the deadline for signing up for Tuesday's election.

029753

"It's just incredible what we've uncovered," Kevin Coan, an election official, said. "Would you believe the names of three dead aldermen? Of course you would. This is St. Louis."

A coalition of civic and church groups, Citizens Concerned with African-American Voter Disenfranchisement, says that although voting fraud is a problem in St. Louis, the city's election officials have gone overboard on tightening voting regulations. The group is contemplating legal action if election officials do not take steps to make it easier for St. Louis residents to vote, particularly blacks, who account for half of the city's 333,960 residents.

"We're not charging specific fraud or specific partisan politics or specific racism, though we aren't naïve," Richard Gaines, a coalition official, said. "What we are charging is that it is not easy to vote in this town if you are black. There's always another form to fill out or another official to see or another office to visit. That has to change."

The city prosecutor, Jennifer Joyce, and state election officials say they are so concerned about voting irregularities that they will send poll observers on Tuesday to keep an eye on things. "We're going to make sure that the process is not tainted in any way," Ms. Joyce promised a few days ago.

And the United States attorney general, John Ashcroft, a Missourian, says he will send in several Justice Department "monitors" and take "appropriate action" should there be any violations of voting rights or instances of voter fraud.

The mayoral candidates seeking nomination on Tuesday — four Democrats and two Republicans — are saying little about voting irregularities other than to call for a clean election. Instead, they are trying to keep the focus on improving the sometimes marginal quality of health care, schooling and economic opportunity in the city.

St. Louis is one of the country's most heavily Democratic cities. So only the Democratic primary is being watched carefully, since winning it is tantamount to winning office. And that primary, if the polls have it right, seems most likely to end up as a down-to-the-wire race between a former mayor, Freeman Bosley Jr., and the president of the city's Board of Aldermen, Francis Slay.

The incumbent mayor, Clarence Harmon, has disappointed many voters over the past four years and appears to have little chance of being re-elected.

Mr. Bosley, who is black, has the support of one of the city's most influential blacks, Representative William Lacy Clay Jr., and probably will get most of the black vote.

Mr. Slay is white and probably will get most of the white vote.

Mr. Harmon, who is black, captured the mayor's job four years ago by unseating Mr. Bosley. He did it with the help of white votes. Where the now disenchanted Harmon supporters go on Tuesday — blacks and whites — could decide the race.

The other Democratic candidate is Bill Hass, a school board member. The Republican candidates are Michael Chance and Francis Wildhaber.

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MO

**FBI subpoenas records from Election Board  
Of the Post-Dispatch  
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The Federal Bureau of Investigation has subpoenaed St. Louis Election Board records on all people who registered to vote, cast ballots or whose efforts were rejected from Oct. 1 through March 6.

The FBI subpoena also seeks all internal board correspondence, including memos and e-mail.

The action, taken Monday, is the first indication that the Justice Department or its agencies appear to be launching a federal investigation into accusations of vote fraud or attempted fraud in the Nov. 7 general election and the city's March 6 mayoral primary.

A federal inquiry would be in addition to an investigation by a St. Louis grand jury, ordered by city Circuit Attorney Jennifer Joyce, into 3,800 suspect voter-registration cards turned in at the deadline for the March 6 primary.

Some of those cards sought to register prominent people already on the rolls, as well as several deceased aldermen and a dog.

Regarding Monday's action, local FBI spokesman Peter Krusing would say only that "a subpoena was served."

He declined further comment. The Justice Department also declined to comment Monday, as did the office of U.S. Attorney Audrey Fleissig.

However, sources with some of the agencies confirmed that the serving of the subpoena signals involvement by an arm of the Justice Department or one of its task forces.

The Post-Dispatch witnessed the serving of the subpoena, which occurred about 3:30 p.m. Monday when an FBI agent, accompanied by a uniformed officer, walked into the Election Board headquarters at 208 South Tucker Boulevard.

The agent read aloud from the two-page subpoena, which was given to one of the employees. None of the board's officials or commissioners were present. Afterward, no workers would comment and none of the commissioners could be reached.

The FBI subpoena gives the Election Board until 9:30 a.m. on May 6 to turn over mandated documents to the Eastern District Circuit Court at the Eagleton federal courthouse. The subpoena states the documents will be given to a federal grand jury.

The subpoena seeks all records pertaining to any person who registered to vote between Oct. 1 and March 6, or whose voter-registration application was rejected.

It also demands all records of anyone who cast absentee ballots or regular ballots during that period, as well as anyone who was turned away at the polls and barred from voting.

The scope of that demand is enormous. The city residents affected would include:

Voters who cast absentee or regular ballots - almost 125,000 on Nov. 7 and close to 83,000 on March 6.

At least 143 unregistered people who, according to former Missouri Secretary of State Bekki Cook, were illegally allowed to cast ballots on Nov. 7.



St. Louis Police Officer Craig Bentrup controls the crowd outside the Board of Election Commissioners building Nov. 7, 2000.

Hundreds of registered voters who, according a postelection investigation by Cook, were improperly prevented from voting on Nov. 7.

At least 15,000 people who registered to vote, or attempted to do so, between Oct. 1 and March 6. That includes the 3,800 suspect voter cards.

Sources say U.S. Attorney General John Ashcroft might recuse himself from the investigation - as may some of his aides - because city voters played a role in Ashcroft's Nov. 7 defeat in his bid for a second term in the U.S. Senate.

Sen. Christopher "Kit" Bond, R-Mo., said Monday, "All St. Louis voters should support this law-enforcement investigation because it may be our city's best chance to clean up our elections and our image."

Earlier this month, Bond called for further investigations because his office had learned from state election officials that 24,000 registered voters in the city, and 33,000 in St. Louis County, also were registered to vote elsewhere in the city or state.

Missouri Secretary of State Matt Blunt says he is collecting voter records to determine whether any of those voters illegally cast multiple ballots in the Nov. 7 or March 6 elections.

Bond has been calling for federal involvement since he and other Republicans alleged vote fraud in St. Louis in the Nov. 7 elections. They were upset by Democratic efforts to keep St. Louis' polls open an extra three hours, until 10 p.m. A local judge approved the request, but a state appeals court ordered the polls closed about 7:45 p.m.

Democrats blamed crowds at the polls on Nov. 7 and confusion over an "inactive voter list" of more than 30,000 registered voters. That list was not distributed to poll workers, causing a crush of angry would-be voters at the downtown Election Board shortly before the polls closed.

But in February, some Democrats alleged attempted vote fraud when the 3,800 suspect voter-registration cards turned up at the registration deadline for the March 6 Democratic mayoral primary.

As a result of the allegations swirling around those cards, the hotly contested primary was conducted under the scrutiny of an unprecedented number of observers dispatched by federal, state and local election officials, or law enforcement agencies.

The Election Board also has been reeling from the arrest on March 1 in Alton of the city's then-top GOP elections official, Kevin Coan. He stands accused of attempting to solicit a minor over the Internet; the "minor" turned out to be fictitious and part of an Alton sex-sting operation.

Several of the board's key employees or commissioners have resigned or are on leave. Gov. Bob Holden, who appoints the four-person board of commissioners, has said he plans to name a new board soon.

Reporter Jo Mannies:  
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Phone: 314-340-8334

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Wash. Times 04/19/01

MO

# FBI advances Missouri voter fraud probe

By Jerry Seper  
THE WASHINGTON TIMES

The FBI has ratcheted up its investigation into Missouri's Nov. 7 presidential election and a separate March 6 mayoral primary in St. Louis, ordering local election commissioners to hand over thousands of documents in an ongoing search for voter fraud.

A subpoena in the FBI's continuing probe, issued without statement Monday, calls for the St. Louis Election Board of Commissioners to surrender voter registration records and other documents. The records are expected to show, among other things, that dead people and a dog were able to cast ballots in one or both of the elections.

The FBI, along with a state grand jury, is looking to examine 3,800 potentially fraudulent voter registration records. Federal and state investigators also want to review all election documents relating to people who registered to vote between Oct. 1 and March 6; records showing whose voter-registration applications were rejected; documents showing who cast absentee ballots; and records of those who were turned away from the polls or otherwise barred from voting.

Investigators also are examining documents relating to 143 unregistered voters known to have voted in the Nov. 7 election.

The Board of Commissioners, which also has been asked by the FBI to turn over all of its related internal correspondence and e-mail, has until May 6 to hand over the documents.

"Voter confidence in the outcome of elections is essential to our democratic system," said Sen. Christopher S. Bond, the Missouri Republican who initially called for the probe. "Events in St. Louis remind us once again how important it is to guard rigorously against any and all attempts to exploit voting laws for political purposes.

"Apparent attempts to break the law in St. Louis are an affront to citizens who follow the law and undermine our faith in the election process," he said.

The FBI and the grand jury initially focused on accusations of widespread voter registration and balloting irregularities during the Nov. 7 election, including a petition prompted by Democratic Party officials to keep the polls open in St. Louis for an additional three hours. The petition, signed by a voter who died in 1999, was later overturned

by an appellate court, although the polls remained open an additional 45 minutes.

Texas Gov. George W. Bush won the Nov. 7 presidential election in Missouri over Vice President Al Gore with 51 percent of the vote. But John Ashcroft, now attorney general, lost his Senate seat to the late Gov. Mel Carnahan, who had died in a plane crash a month earlier. Mr. Carnahan's widow, Jean, was appointed to his seat. Despite questions about the vote and suspected irregularities, Mr. Ashcroft did not challenge the results. St. Louis' high Democratic totals figured prominently in Mr. Ashcroft's defeat.

Questions also surfaced after the March 6 mayoral primary, when it was reported that at least three dead aldermen had registered to vote in the election. The primary was won by Alderman Francis G. Slay, ensuring that St. Louis would get a new chief executive for the third time in the past eight years.

Mr. Bond, along with the Landmark Legal Foundation, a Washington-based public-interest law firm, initially sought the investigation in November. They told the Justice Department that widespread voter irregularities by Democrats had tainted both elections. Rep. William

L. Clay, Missouri Democrat, later charged that thousands of registered voters — mostly minorities — were turned away from the polls by Republicans.

Landmark's president, Mark Levin, said in a letter last month to Lee J. Radek, head of the Justice Department's public-integrity section, that shortly after a St. Louis judge ordered the polls to stay open longer on Nov. 7, prerecorded telephone messages from the Rev. Jesse Jackson informing residents they could vote late "began ringing into St. Louis households." He also said Mr. Gore personally called a popular radio talk show to say the polls would stay open late.

"If the citizens of Missouri are to have any confidence at all in the integrity of their elections, then the U.S. Justice Department must hold the St. Louis Election Board and anyone else responsible under the U.S. Voting Rights Act," Mr. Levin said.

FBI officials in St. Louis confirmed that a subpoena was issued but declined to comment on the investigation. U.S. Attorney Audrey Fleissig in St. Louis and Justice Department officials in Washington also have declined to comment.

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**boston.com**

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

## N.Y. man fights illegal-voting conviction

The Boston Globe

### Political activist seeks vindication as ruling nears

By Darryl McGrath, Globe Correspondent, 1/8/2004

NY

ALBANY, N.Y. -- A disbarred Wall Street lawyer, convicted of the almost unheard-of felony charge of illegal voting, is seeking vindication through a last-ditch appeal to the US Supreme Court.

The appellant is John Kennedy O'Hara, a longtime Brooklyn political activist who ran several insurgent campaigns against the Brooklyn Democratic machine until 1996, when he was convicted of voting using an address that was not his permanent residence. He says party bosses targeted him for prosecution to silence him.

The Supreme Court is scheduled to decide tomorrow whether it will accept the appeal. The case has wended through state and federal courts, an odyssey that has included a conviction, a reversal on appeal, a hung jury in a second trial, and then another conviction. A state appeals court in Albany upheld the second conviction.

O'Hara has made a full-time pursuit out of seeking an overturn of his conviction and reinstating his right to vote and his ability to practice law. He faced up to 28 years in prison on seven charges of illegal voting, but instead was sentenced to 1,500 hours of community service. He has spent that time picking up garbage in Brooklyn parks. His appeals have cost him tens of thousands of dollars, but he said he has persevered on behalf of other activists who might be intimidated by fears of similar prosecutions.

"If you're going to start prosecuting people for voting, there's not much left after that," he said. "You don't have much choice when you're a convicted felon and a disbarred attorney, because you're wrecked."

He said Brooklyn District Attorney Charles Hynes, backed by the Brooklyn Democratic Party, selectively prosecuted him for voting using the address he shared for a year with his then-girlfriend, even as he maintained his longtime apartment 14 blocks away in Brooklyn.

O'Hara practiced at a Wall Street law firm while also following his political passions. He thinks mainstream Democrats wanted to silence him because of his habit of running for office and also running the campaigns of insurgent candidates.

In 1996, O'Hara was among several people who filed a federal lawsuit seeking new primaries in elections for legislative offices and judgeships. In such races in Brooklyn and much of New York City, the primaries almost always decide the winner. O'Hara, an unsuccessful candidate for a state Assembly seat that year, was charged with illegal voting a few weeks later. The elections from which the criminal charges stemmed had occurred four years earlier.

A spokesman for Hynes dismissed O'Hara's accusation of selective prosecution.

"Mr. O'Hara has had a day and a half in court, and the district attorney's position has been consistently upheld," spokesman Jerry Schmetterer said. "We've been commenting on this for a long time, and going to the Supreme Court -- he's certainly entitled to do it, but this case has already been adjudicated three times."

O'Hara is the first person convicted of illegal voting in New York since Susan B. Anthony, who voted in a federal election in Rochester in 1872, when only men had the right, said O'Hara's attorney, Barry Fallick. Others have noted the rarity of O'Hara's conviction.

"Usually cases like this aren't prosecuted," said Lee Daghljan, a spokesman for the New York State Board of Elections. "They're not high on most DAs' lists, this sort of thing."

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Illegal voting was seldom prosecuted in New York City even when it was a blatant part of politics, said Dan Lorello, a state archivist. "Illegal voting happened all the time in New York City in the 19th century. You voted early and often. Dead people, ballot stuffing — it was like Chicago. But nobody really got convicted."

Given that history, and the brutal style of Brooklyn politics, the prosecution of O'Hara has raised some eyebrows. The David-vs.-Goliath nature of O'Hara's battle against the Brooklyn District Attorney's office also has won O'Hara the support from the editorial pages of several New York newspapers.

"From the Brooklyn DA's perspective, it's proven to be a mistake to have prosecuted the case, even though he won, because he's gotten so much bad publicity over it," said Erik Engquist, a political columnist for Courier Life Publications, a group of Brooklyn community newspapers.

"The suggestion that it wasn't politically motivated is just absurd. Brooklyn politics is not for the fainthearted. There is retribution, there is recrimination if you cross certain lines. John O'Hara did cross those lines, but on the other hand, he was never important enough to justify the response he got. He has suffered greatly from this experience. And he is clutching to the thinnest thread of legal hope."

The New York State Court of Appeals in Albany upheld O'Hara's conviction in a 5-to-2 vote in 2001. The Second Circuit Court of Appeals subsequently refused to grant him an appeal.

O'Hara, who participated in his first political campaign at age 12 by handing out fliers for George McGovern, said waiting for the Supreme Court's decision is relatively easier because he has suffered many defeats. "You have to hang in there," he said. "You have to give it a shot."

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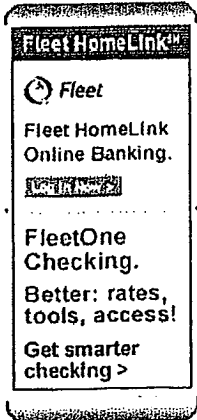


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# Fake Votes From Rikers?

## Sources say bosses used inmate IDs



By Dan Janison  
STAFF WRITER

June 23, 2003

Probers in the widening city Correction Department political scandal have been told of alleged efforts by Rikers Island supervisors to falsify voter registrations and absentee ballots, Newsday has learned.

The Bronx district attorney's office and a grand jury investigating the case have interviewed jail supervisors and officers who allegedly did campaign work on city time last year, Rikers sources said.

A key figure in the probe is Anthony Serra, the former three-star Rikers chief with Republican Party ties who is already facing grand-larceny and false-filing charges related to allegedly diverting correction personnel and equipment for work on his suburban home.

One theory under investigation, sources say, is that the registrations were made in the name of inmates to help election candidates favored by bosses - either with or without the inmates' knowledge.

Inmates are not barred from voting unless serving time for felony convictions. Most city jail inmates - a constantly churning population of as many as 14,000 at a time - are detainees awaiting trial.

City voting scandals of the past have involved the use of absentee ballots to cast phantom votes, such as nursing-home officials who filled in clients' ballots.

Correction Department spokesman Tom Antenen said that in all of last year's election cycle, there were 48 requests from city inmates for absentee ballots.

"We pick up the ballots at the Board of Elections and deliver them to inmates requesting them," he said. "When they fill them out, we deliver them to the Board of Elections."

Of the 48 delivered to the board in the last election, however, 16 were certified, meaning accepted as valid by the board, according to the department.

"The rest were not certified," Antenen said. "Either they failed to sign the form or they were not registered, that type of stuff."

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Antenen said he had no knowledge of a vote probe. The city Department of Investigation declined to comment. Board of Elections officials had no comment.

After months of scandals in the city's massive jail system, no criminal charges have been filed regarding the campaign operations.

When Serra was indicted in February, Bronx prosecutors said the counts of grand larceny, defrauding the government and falsifying business records filed against him involved his personal use of jail personnel and resources to run errands and work on his Putnam County house.

Most of the indictment's 89 counts strictly hold Serra responsible for false sign-in sheets and overtime reports filed on behalf of an aide. These counts cite allegedly false department reports filed bi-weekly between June 2002 until October 2002.

One key period was omitted from the charges: Aug. 31 to Sept. 16. That's the period surrounding the statewide party primaries, which were Sept. 10. At the time, Serra was a "security consultant" by the state GOP to help Gov. George Pataki win a second ballot line, the Independence Party nomination.

Officers were surreptitiously videotaped, reportedly doing campaign work, on that day, as shown weeks later on WABC-TV. Serra, dropped as a consultant, has pleaded not guilty to the charges. He has resigned from the department.

A key question is whether prosecutors will account for the missing 17-day period by adding charges involving the campaign operations allegedly conducted from Rikers Island.

"During that period, people under Serra's control were rolling their eyes and grumbling that they had to pick up campaign and election-related items," said an official who declined to be identified, recalling September's primary effort.

"They were talking about having to pick up absentee ballots and voter registration forms," the official said. "Apparently they needed to get people registered to vote in the Independence primary."

Sources said Serra conducted campaign business out of the trailer on Rikers that served as his office at the time. Two wardens under Serra's command allegedly directed submission of voter-registration cards, informants said.

The review has arisen along with other allegations of partisan abuse within the department. Deputy Warden Lionel Lorquet stated in court papers that he found an official of the department's investigations unit videotaping his house, where he was to host a mayoral campaign fund-raiser for Democrat Mark Green in 2001.

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## American Center for Voting Rights Refers Voter Fraud Investigation to Department of Justice, Congressional Oversight Panel

**U.S. Newswire**  
MediaLink Worldwide

1 hour, 52 minutes ago

To: State Desk

Contact: Jim Dyke for American Center for Voting Rights, 843-722-9670

COLUMBUS, Ohio, March 21 /U.S. Newswire/ – Today the American Center for Voting Rights (ACVR) referred a compendium of preliminary findings of registration fraud, intimidation, vote fraud and litigation to the U.S. Department of Justice ([news - web sites](#)). The report was previously made available to the House Administration Committee who will hold a field hearing on election fraud in Columbus today.

A report focused on similar fraudulent activity in Florida will be made available to the public in the coming weeks. Among the Florida report's findings were a box of 180 ACORN voter registrations surfacing just one week before election day that prompted a statewide investigation into the group's practices.

The Ohio report states, "Third party organizations, especially ACT, ACORN and NAACP engaged in a coordinated "Get Out the Vote" effort. A significant component of this effort appears to be registering individuals who would cast ballots for the candidate supported by these organizations. This voter registration effort was not limited to the registration of legal voters but, criminal investigations and news reports suggest, that this voter registration effort also involved the registration of thousands of fictional voters such as the now infamous Jive F. Turkey, Sr., Dick Tracy and Mary Poppins. Those individuals registering these fictional voters were reportedly paid not just money to do so but were, in at least one instance, paid in crack cocaine."

After giving the report to the Department of Justice ([news - web sites](#)), ACVR General Counsel Thor Heame stated in testimony prepared for delivery before the House Administration Committee, "there can be no doubt that election safeguards are critical to protecting our elections. When Dick Tracy's fraudulent vote is counted, an honest Ohio voter is disenfranchised. So I find it is beyond the pale that the same organizations who unsuccessfully sought to remove election safeguards by judicial fiat during the election are once again seeking to eliminate these safeguards by state and federal legislation while continuing their battle in the courts." Hearne will testify on this issue today before the House Administration Committee.

ACVR is a non-partisan 501(c)(3) legal and education center committed to defending the rights of voters and working to increase public confidence in the fairness and outcome of elections. The group is compiling similar reports for the states of Pennsylvania and Wisconsin which will be released in the coming weeks. To download a copy of the report or for more information on ACVR, please visit <http://www.ac4vr.com>

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# PawtucketTimes.com

08/20/2005

## Four local residents are charged with election fraud

Times Staff

RT

**EAST PROVIDENCE** – A father and son duo and a Seekonk husband and wife have been charged with election fraud stemming from last fall's primary race in East Providence, the state Attorney General's Office announced Friday.

C. Richard Costa, 77, of Bristol, his son Keith Costa, 45, of East Providence; and Antonio Arruda, 51 and Aida Arruda, 50, both of Seekonk, are accused of fraudulently casting or attempting to cast ballots in a voting district other than where they lived in the Sept. 14 East Providence Primary.

The four individuals reportedly face a total of 15 counts, both felonies and misdemeanors, according to published reports.

Last fall, Thomas Reilly, a member of the East Providence Board of Canvassers, filed a complaint alleging voter fraud, and the Rhode Island State Police conducted an investigation. Both the Costas and the Arrudas were originally charged last October with voting illegally.

According to police, the Costas are alleged to have registered for the East Providence Democratic Primary using the business address of Keith Costa's auto body shop, James Auto Body, 175 Taunton Ave., East Providence.

Police also allege the Arrudas used the address of a Dunkin Donuts that they own in East Providence when they registered to vote in the primary.

All of the defendants are scheduled for a pre-arraignment conference in Providence County Superior Court on Aug. 30.

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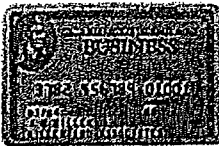
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# Midwest News

Web posted Saturday, July 12, 2003

## Voter Fraud Suspect Reaches Agreement

RAPID CITY (AP) -- A Rapid City man, who has been accused of voter fraud, will make a plea agreement.

Lyle Nichols had been accused of falsifying voter registration cards during last year's campaign. He faced up to five years in prison on each of five counts of fraud.

But his attorney said Thursday that a plea agreement has been reached with the state Attorney General's Office which would lessen the charges to class six felonies.

The agreement is expected be finalized in court next week.

Nichols was arrested last October after the Pennington County auditor's office noticed irregularities in registration cards that were submitted. Authorities said at the time that more than 230 registrations were pulled because of accuracy concerns.

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HoustonChronicle.com -- <http://www.HoustonChronicle.com> | Section: Politics

Feb. 5, 2005, 11:55AM

TX

## Vote fraud suspected in House District 137

### Loser in primary suspected in bogus registration swaps

By **JOE STINEBAKER**  
Copyright 2005 Houston Chronicle

Harris County officials are investigating allegations of vote fraud in connection with a legislative primary in southwest Houston last year.

#### RESOURCES

• **Complete coverage:** See more stories and resources on the 79th Texas Legislature from the Houston Chronicle.

County Tax Assessor-Collector Paul Bettencourt, who serves as the county's voter registrar, asked the district attorney to investigate after discovering what he thinks was a pattern of improper voter registrations in state House District 137.

Neither District Attorney Chuck Rosenthal nor the investigator in the case could be reached for comment Friday.

Bettencourt and state Rep. Scott Hochberg, D-Houston, the incumbent, said the investigation is a continuation of one begun last year and is focused on Bernardo Chike Amadi, who unsuccessfully challenged Hochberg in the March Democratic primary. Amadi could not be reached for comment Friday.

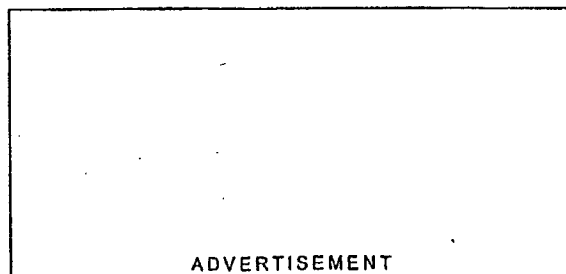
Bettencourt said he has given the district attorney information about at least 157 voters, and perhaps hundreds more, whose addresses were changed to make it look as if they were residents of District 137.

Officials think the registrations were moved into the district without the voters' knowledge in the hope that they would support Amadi, a Nigerian immigrant, because they also were African immigrants.

The initial investigation began early last year based on complaints from voters, Bettencourt and Hochberg said, but stalled after investigators were unable to question Amadi.

More evidence surfaced recently in connection with the election challenge filed by former state Rep. Talmadge Heflin, a Republican who is contesting his 33-vote loss in District 149 to Hubert Vo.

[joe.stinebaker@chron.com](mailto:joe.stinebaker@chron.com)



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## Hamilton Co. Election Chief Suspects Fraud

December 18, 2002

CHATTANOOGA (AP) -- Hamilton County's elections chief says a review of records from a county commission primary show some voters used other names to cast ballots.

County election administrator Fran Dzik said she has advised District Attorney Bill Cox that about possible voter fraud.

Dzik made the comment Wednesday in chancery court, where a judge held a hearing on a dispute over the county election commission's denial of records to the Chattanooga Times Free Press.

Judge Frank Brown did not immediately rule on the newspaper's request for records.

Incumbent William Cotton won the county commission District four primary by 34 votes on May seventh. Cotton could not be reached by telephone for comment.

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Home Tuesday November 5, 2002

Local News  
Monday, November 4, 2002 10:15 pm

## Hidalgo County voting rolls will not be subpoenaed

By Andrea Hauser

### The Monitor

McALLEN — A controversial study alleging that 16,000 potentially dead and ineligible people are still registered on Hidalgo County voter rolls will not be subpoenaed, Hidalgo County District Attorney Rene Guerra said.

County Elections Administrator Teresa Navarro requested on Monday that the list of potentially dead voters be subpoenaed by the attorney general's office and Guerra so that names could be examined and taken off election rolls immediately to prevent possible voter fraud.

But Guerra said he thinks the study, paid for by the Hidalgo County Republican Party, is not credible and is part of a Republican agenda to discredit the elections department and Navarro.

"I cannot issue a subpoena on a witch hunt," he said. "I don't believe that these people are being righteous about their claim. Show me one document that shows a dead person voted, then I can issue a grand jury subpoena for a private company."

Compiled by Austin-based Voter Views Information Systems, the study was released Oct. 22 by Hidalgo County Republican Party Chairman Hollis Rutledge and claims that approximately 4,223 names included in the sampled voter rolls are of dead people, some from as far back as 1982.

Study results from 912 of those names also claim that 130 deceased voters cast ballots in the March primary election. If the study is valid, it would indicate substantial voter fraud.

The Hidalgo County Republican Party on Saturday decided not to release details from the study immediately, opting instead to form a task force to discuss the matter. No one outside the party has seen the study or been able to verify its claims independently.

"He's (Rutledge) made allegations. Those are strong allegations, and I've got to turn them over," Navarro said. "I wouldn't be doing my job if I didn't turn it over the attorney general or the D.A. based on allegations that they made. It's my job to turn it over to them and they do with it what they need to do."

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Jane Shepperd, spokesperson for Attorney General John Cornyn's office, said the office has not received the request yet or made any decision regarding it.

Information from the Texas Ethics Commission indicates that a large part of Voter Views clientele is made up of Republican candidates or groups, which Democratic party officials said discredits the study because it is not a non-partisan business.

But Robert Edwards, general manager and a partner in Voter Views, said public records available about the company do not indicate all of its clientele, which includes a number of groups and consultants for both the Democratic and Republican parties.

Edwards said public records used by Voter Views to determine whether the names were of eligible voters are also not accepted by the elections department because the elections code process of verifying a death is more detailed and work-intensive.

"We're talking massive amounts of information coming through the hole every month and she (Navarro) has to process it," Edwards said. "I'm waiting to see how things are going. I would love to be an active part of helping the county assimilate the information on a monthly basis because we definitely could do it. We don't want it to be a situation like it's turning into. We don't want it to be a finger-pointing situation.

"We simply were asked to analyze the voter rolls. Once we did that job, we walked away."

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Original URL: <http://www.jsonline.com/news/metro/may05/325342.asp>

WI

# Arrests sought in election fraud

## 2 accused of falsifying voter registration cards

By **DERRICK NUNNALLY** and **GREG J. BOROWSKI**  
[dnunnally@journalsentinel.com](mailto:dnunnally@journalsentinel.com)

Posted: May 11, 2005

Two arrest warrants were issued Wednesday alleging election fraud by two voter-registration workers employed last year to sign up new voters.

According to warrants filed by the Milwaukee County district attorney's office, Urelene Lilly, 48, and Marcus L. Lewis, 23, both admitted to authorities that they filled out multiple voter-registration cards using fictitious information to earn money from Project Vote, which paid workers such as them \$40 per day plus \$1.75 for each registration above the daily quota of 24 new voters.

Project Vote registered about 40,800 names in Milwaukee County alone, according to a national spokesman.

District Attorney E. Michael McCann would not say when or if more information on other allegations of voter fraud might be available.

The warrant filed for Lilly says she was addicted to crack cocaine when the alleged fraud happened, and that she handed in "approximately 75 fraudulent voter registration cards," using names taken from the phone book, made-up birthdates and Social Security numbers, then had her 15-year-old daughter sign each card. She turned in no valid registrations, the warrant says, and is charged in connection with nine registrations for people who didn't vote in the November presidential election.

Lewis' warrant says he was fired by Project Vote for submitting a registration card in the name of a dead person, but before he did that, he allegedly turned in duplicate cards for the same voter on "numerous" occasions. He admitted turning in multiple entries for some family members, the warrant says.

Lilly and Lewis were charged with five felonies each: three counts of forgery, one count of election fraud and one count of misconduct in public office, because they had been sworn in as deputy voter registrars for the registration effort. If convicted as charged, each could face a maximum possible sentence of 25 years in prison.

The charges came a day after McCann and U.S. Attorney Steve Biskupic announced that their probe into election irregularities in the city of Milwaukee had turned up clear evidence of voter fraud.

The probe, launched in January after reports by the Journal Sentinel detailed widespread election problems, found more than 200 felons who illegally voted in the city, while still on probation or parole, and at least another 100 cases in which people voted twice, or used fake names, false addresses or the names of dead people to vote.

Investigators also said officials had been unable to eliminate a 7,000-vote gap cited by the newspaper, in which more ballots were counted than people who had been recorded as voting. City officials had resolved some of the questions, but investigators said a gap of about 4,600 remains.

Biskupic and McCann also said they had found about 65 false names that had been submitted by deputy registrars, such as the two charged Wednesday.

Additional charges are expected to be filed. Prosecutors have warned, however, that the cases may be hard to prove because the city records are so sloppy.

The issue of fraudulent registrations came up even before the Nov. 2 election, as various groups made major pushes to get likely supporters

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5/17/2005

<b>Election Investigation</b>
<b>Quotable</b>
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In October, the Journal Sentinel reported that two of Project Vote's workers in Milwaukee were felons on probation, which makes it illegal for them to vote and, thus, to register voters. A week later, before the Nov. 2 election, Racine County officials issued felony charges against two Project Vote workers on allegations of falsifying registration cards.

The charges are similar to those filed Wednesday by McCann.

In the Racine case, charges were filed against Robert Marquise Blakely, 24, and Damien D. Jones, 25, both of Milwaukee. Both men pleaded not guilty.

Jones had been fired as the group's leader for Racine and Kenosha counties after the Racine clerk's office raised questions about registration cards he had submitted. As in the Milwaukee cases, the pay for the two was based, in part, on how many signatures they submitted.

Earlier this year, Gov. Jim Doyle called for a state law that would bar groups from paying registration workers on a per-signature basis, or basing pay on meeting a signature quota. That proposal, part of a broader reform package, has not been acted on by the state Legislature.

*Sheila Lalwani of the Journal Sentinel staff contributed to this report from Racine.*

From the May 12, 2005, editions of the Milwaukee Journal Sentinel  
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WC

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WA

# Voter to face fraud charges

By **MAGGIE O'BRIEN** and **JEFF ZELENY**  
Register Staff Writer  
04/25/2000

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Seattle sex columnist Dan Savage will be charged with felony voter fraud for allegedly casting a vote in Iowa's first-in-the-nation presidential caucuses, a Des Moines attorney said Monday.

The Polk County attorney's office is poised to charge Savage with two counts of voter fraud, according to attorney Mark Weinhardt, who is representing Savage.

Savage faces a felony charge and a serious misdemeanor charge, which could land him behind bars for a total of six years if he's convicted, Weinhardt said. Weinhardt, who said he hadn't seen official court documents, declined to comment further.

Savage claimed that he used his temporary address at Des Moines' Kirkwood Hotel to vote in the January caucuses. In the days after the caucuses, he wrote an article for online magazine Salon.com called "Stalking Gary Bauer." Savage, who is gay, wrote that he tried to infiltrate the conservative Republican's Iowa campaign as an act of protest. He also claimed that he attempted to infect Bauer with the flu bug by licking door knobs at the campaign headquarters.

Loras Schulte, who headed Bauer's Iowa campaign, said he was pleased to hear that Savage would be charged. "The reason it was important to me was because the whole process of our caucuses and voting is very dear to my heart," Schulte said.

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"For someone . . . with so careless disregard for the privilege one has in voting . . . it didn't sit well with me."

Deputy Polk County Attorney Joe Weeg declined to comment on the Savage case, saying the matter remained under investigation.

Savage could not be reached for comment.

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Today | This Week

## Health district member faces vote-fraud charges

Christina Leonard  
The Arizona Republic  
Jan. 4, 2005 12:00 AM

AZ

A Maricopa County grand jury has indicted a member of the county's new special health care district on a dozen charges related to election fraud.

James J. Chavez, 50, faces felony charges ranging from fraudulent schemes to false voter registration. He is scheduled to appear in court for his arraignment Jan. 12.

In November, Chavez narrowly beat out three competitors for the District 5 seat of the Maricopa County Special Health District board. District 5 encompasses the southwest Valley.

Chavez said Monday that the accusations are false. And he said he is confident that justice will prevail.

"We'll have to let this play out," he said. "This is politically motivated. Unfortunately, I got more votes than anyone else."

County officials declined comment Monday.

The indictment, returned Dec. 29, alleges that Chavez provided nominating documents knowing they contained false information and improperly voted in several elections, among other charges.

Campaign opponent Sylvia Moreno challenged Chavez's standing by claiming that he did not live within the proper district boundaries in the southwest Valley and that he provided health care services through his organization.

A Maricopa County Superior Court judge in December dismissed the civil suit against Chavez because there wasn't enough evidence to move forward with the case.

Chavez said the latest allegations revolve around the same issues, and he hopes "the same thing happens here."

Chavez is former president and chief executive officer of Corazon de Oro Community Services.

He said people should know the other side of the story: "People voted for me because they know I've served the community of District 5 with my heart and soul."

Reach the reporter at christina.leonard@arizonarepublic.com or (602) 444-4845.

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## No bail, no release in vote fraud

By Michael Baker

The Fresno Bee

Published 09/18/03 05:20:28

A judge denied requests from a former Mendota mayor and an alleged accomplice to be released without posting bail after the two men pleaded innocent Wednesday to voter fraud charges.

Robert Rasmussen, 54, who served on the Mendota City Council from 1992 until he was voted out in 2000, faces five charges related to forging signatures on petitions to recall Mendota's mayor and mayor pro tempore in 2001.

Steve Burrola, a former employee at Rasmussen's security company, faces three charges related to the fraud.

A conviction on one of the election fraud counts is punishable by up to three years in prison.

Rasmussen's attorney, Randall Shrout, cited his client's heart problems and depression when asking for his release.

Shrout said Rasmussen has no other criminal history except for a no-contest plea to a misdemeanor charge of theft from an elderly person.

Burrola's attorney, George Herman, noted that the incident dates back to 2001.

Burrola told the judge that he has stayed out of trouble since his 1996 parole on a drug-related conviction.

Fresno County Superior Court Judge Alan M. Simpson denied both men's requests.

Rasmussen's bail remained at \$22,000 and Burrola's at \$12,000. He scheduled Sept. 30 for the defendants' preliminary hearing, when a judge determines whether there is sufficient evidence to hold suspects for trial.

Authorities say Burrola forged several signatures at the direction of Rasmussen, who knew he didn't have enough signatures to qualify the recall.

In July 2001, the Fresno County Clerk/Registrar of Voters Victor Salazar disqualified the last recall attempt, saying 61% of the signatures on one petition and 57% on another were not valid.

He said the most prevalent violation was information completed by the petition circulator instead of the petition signer.

The reporter can be reached at mbaker@fresnobee.com or 441-6465.

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*forged signatures  
on petition CA*

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The Telegraph (GA) – Posted on Tue, Oct. 29, 2002

report  
suspected  
fraud

GA

**U.S. Attorney staff to hear midstate voter complaints**

By Debbie Rhyne  
Telegraph Staff Writer

Middle Georgia voters who encounter Election Day problems can pass their complaints on to federal prosecutors.

Middle District of Georgia U.S. Attorney Max Wood announced Monday that he will staff the district's six federal courthouses Nov. 5 and again Nov. 6 for voters who want to report suspected election fraud or problems with election procedure.

"We want to make every effort to be available should there be any problems on Election Day," Wood said. "We are not poll watching, nor do we have a significant history of election fraud on the Macon Division.

"However, in light of the problems Florida had in their transition to electronic voting, we must be prepared in case problems arise."

Georgia is using statewide electronic voting machines for the first time - a move that was pushed through after the country watched Florida's problems with paper ballots in the 2000 presidential election. Florida switched to the electronic voting for this year's primary, but again experienced a number of problems, including complaints of poorly trained poll workers and voters being turned away because machines weren't working.

Wood said his staff's role will not be the same as those of election monitors or poll watchers, who are typically personnel from the U.S. Department of Justice and get involved "when there is a documented history of election abuse."

An example of a county that would warrant Justice Department scrutiny is Dodge County, where a vote-buying scandal in the mid-1990s ultimately netted 30 convictions. An investigation found problems with votes being cast multiple times by the same person as well as votes being cast by both dead people and convicted felons.

Dodge County is part of the Southern District, which announced earlier this month it too will have staff available at its federal courthouses.

While based in Macon, the middle district covers a 70-county area and also has offices in Albany, Athens, Columbus, Thomasville and Valdosta. The courthouses in all of these cities will be staffed for the election.

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Election board confronts rep for voting equipment

February 6, 2004

Greenwood -- Members of the Johnson County Election Board on Thursday blasted a representative from Election Systems & Software for providing allegedly illegal voting equipment during last year's general election. The state's election commission had not certified the software used in the machines as reliable and accurate, which meant counties should not have used it.

The company left Johnson County officials with the impression that everything they had received was approved by the state, election board member Jean Harmon said. Voters in Wayne and Henry counties also used the machines.

ES&S representative Wesley Wiley read a statement from the company standing by the reliability of machines but saying that the equipment had all been returned to a previous version of the software that was certified by the state.

"That reinstallation is complete," he said. "Our focus now is to make sure voters, election administrators and poll workers are educated about the systems."

That may not be enough, Harmon said.

"When you sold the equipment to the county, you told us the equipment was certified," she told Wiley. "We held an illegal election. We have every reason to doubt this company and their equipment, its integrity."

Wiley said he hopes the state will still approve the most recent version of the software in time for this year's election. There is no penalty under Indiana law for using illegal equipment to conduct an election.

JN

Voting machine  
not certified

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IN

Elections

## State, federal officials launch anti-fraud effort

By Michele McNeil Solida

[michele.mcneil.solida@indystar.com](mailto:michele.mcneil.solida@indystar.com)

October 30, 2002

With less than a week to go before Tuesday's election, state and federal officials stepped up their efforts to catch and deter voter fraud.

Indiana Secretary of State Sue Anne Gilroy and U.S. Attorney Susan Brooks announced their voter integrity effort Tuesday, when they urged voters to be on the lookout for election corruption.

They asked voters to be vigilant and to call state or federal officials with complaints.

"I spend a lot of time encouraging people to vote, and I don't want voters to lose their voice. We're asking voters to not let that happen," said Gilroy, who is Indiana's chief election officer.

Just a phone call away are lawyers with the secretary of state's election division, officials with the U.S. attorney's office and FBI agents. Staffers from each office will be on duty Election Day to take complaints.

Gilroy touted this as an improved and better-publicized partnership between federal and state officials -- one that will allow election complaints to be handled better and resolved more quickly.

Election fraud is a federal offense that can bring up to five years in prison, said Brooks, who represents the southern district of Indiana. Election crimes include failing to count all votes, providing false information to poll workers, buying votes and threatening people not to vote.

On the same day Indiana announced its effort, President Bush signed into law election reform legislation. It requires each state to maintain a statewide voter registration list, to make polling places accessible for people with disabilities and set up a voter fraud hotline. Indiana is already undertaking these initiatives, Gilroy said.

"Again, we're ahead of the curve," she said.

Efforts to  
Catch &  
Deter voter  
fraud

Call Michele McNeil Solida at 1-317-615-2381.

029777

Kansas City Star – Posted on Thu, Oct. 31, 2002

*Protect Voters  
Rights KS*

**State, federal officials to monitor Kansas elections**  
By JOHN L. PETERSON  
The Kansas City Star

TOPEKA - Kansas and federal officials announced Wednesday they will team up to protect the rights of Kansas voters as they go to the polls on Tuesday.

Secretary of State Ron Thornburgh and U.S. Attorney Eric Melgren said at a joint press conference they will be prepared to protect Kansans from election fraud.

"We will be proactive to ensure public confidence in the integrity of the election process by protecting voting rights and prosecuting voting crimes," Melgren said.

"This is in no way suggesting that we anticipate problems with the state of Kansas election officials."

The U.S. attorney said most election crimes are easily recognized. They include voter bribery, voter intimidation and ballot forgery.

Other forms are more subtle. For example, it is a crime to seek out the elderly, socially disadvantaged or the illiterate to unfairly influence their votes.

Leon Patton, an assistant U.S. attorney, has been assigned to be the person who will field voting complaints and initiate investigations in conjunction with the FBI.

Reports of possible violations of state voting laws will be forwarded to the Kansas attorney general.

Patton can be reached in Kansas City, Kan., at (913) 551-6730. The U.S. attorney's office also may be reached on Tuesday in Topeka at (785) 295-2850 and in Wichita at (316) 269-6481.

FBI agents can be reached on Tuesday in Kansas City at (816) 512-8200, in Topeka at (785) 235-3811 and in Wichita at (316) 262-0031.

In Topeka, the secretary of state's telephone number is (785) 296-4564.

"It should be easier to vote and harder to cheat," Thornburgh said. "If any Kansan has a problem or question between now and Election Day, pick up the phone and let us know."

To reach John L. Peterson, who covers Kansas government and politics, call (785) 354-1388 or send e-mail to [jpeterson@kcstar.com](mailto:jpeterson@kcstar.com).

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029778

Lexington Herald Leader (KY) - Posted on Wed, Oct. 30, 2002

*Suspected  
Fraud* *KY*

**District election officer appointed  
HE WILL SUPERVISE OFFICIALS RECEIVING REPORTS OF FRAUD**  
By Louise Taylor  
HERALD-LEADER STAFF WRITER

If you suspect or see skulduggery at the polls on Tuesday, a special team of G-men will be available to look into your complaint.

U.S. Attorney Gregory Van Tatenhove appointed his assistant Thomas Self as district election officer yesterday for the eastern half of Kentucky. The move was made in the wake of U.S. Attorney General John Ashcroft's Oct. 8 announcement that the government was bucking up its efforts to prosecute election crime.

Self, a federal prosecutor for 23 years who specializes in election fraud, will serve two years in the position. He will supervise a team of FBI agents and U.S. postal inspectors who will be on duty election day to receive complaints of fraud.

Van Tatenhove said election crimes such as vote buying and ballot forgery are easy to recognize, but others -- such as seeking out the elderly, illiterate or disadvantaged to badger for votes -- are more subtle.

"Election fraud dilutes the worth of votes honestly cast," Van Tatenhove said. "It also corrupts the essence of our representative form of government."

If you suspect election fraud, there are several numbers to call: The U.S. attorney at (859) 233-2661; the FBI at (502) 583-3941; the U.S. Postal Inspection Service at (859) 231-6778; or the state attorney general at 1-800-328-8683 (VOTE).

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September 17, 2004 Friday  
Late Edition - Final

**SECTION:** Section A; Column 1; Editorial Desk; Editorial Observer; Pg. 26

**LENGTH:** 920 words

**HEADLINE:** How Denying the Vote to Ex-Offenders Undermines Democracy

**BYLINE:** By BRENT STAPLES

**BODY:**

Pundits blame apathy for the decline in voter turnout that has become a fact of life in the United States in the last several decades. But not everyone who skips the polls on Election Day does so by choice. This November, for example, an estimated five million people — roughly 2.3 percent of the number of people eligible to vote — will be barred from voting by state laws that strip convicted felons of the franchise, often temporarily but sometimes for life.

These laws cast a permanent shadow over the poor minority communities where disenfranchised people typically live. Children grow up with the unfortunate example of neighbors, parents and grandparents who never vote and never engage in the political process, even superficially.

As a consequence, the struggling communities that need political leadership most of all are trapped within a posture of disengagement that deepens from one generation to the next.

While many things will need to change before the country can reinvigorate the electorate, doing away with postprison sanctions — the most punitive in the democratic world — has to be near the top of the list.

The case for doing so has recently been laid out in a deluge of lawsuits, reports and studies that document the corrosive effects of disenfranchisement on the civic life of this country.

The most startling of these studies, published by Christopher Uggen of the University of Minnesota and Jeff Manza at Northwestern University, shows that the number of people touched by these laws far exceeds the five or so million who have officially and directly lost the right to vote.

For starters, hundreds of thousands of people who are still eligible to vote will not do so this year because they will be locked up in local jails, awaiting processing or trials for minor offenses.

An even larger group of eligible voters, numbering perhaps in the millions, may stay away from the polls because they are confused by the law and mistakenly believe that they have lost the right to vote.

Republican operatives have deliberately used scare tactics with this group of voters — most of them Democrats — in the hope of keeping them home on Election Day. Taken together, the truly disenfranchised, who are actually barred from voting under the law, and the de facto disenfranchised, who don't vote because they are confused about the law, could account for 5 percent of the voting-age population.

A vast majority of the disenfranchised in this country would meet the qualifications for voting if they were citizens of Britain, France, Germany or Australia. Indeed, many nations value the franchise so much that they arrange for people to vote even from prison.

Why does America treat ex-felons so much worse than other democracies? Legal scholars attribute the problem to this country's difficulties with race.

In particular, they cite the racist backlash in the South during Reconstruction, when former slaveowners were forced to endure the sight of former slaves' lining up to vote at polling places and actually holding seats in state legislatures.

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## How Denying the Vote to Ex-Offenders Undermines Democracy The New York T

Led by Mississippi, the Southern states eventually adopted a series of measures that wrote black citizens right out of the state constitutions. New statutes barred black Americans from the ballot box with poll taxes, literacy tests, grandfather clauses and laws that took the vote away from people who committed certain crimes.

The crimes were carefully selected so they would affect the maximum number of black Americans while exempting as many whites as possible. For example, new state laws sometimes disenfranchised people for petty theft, minor swindling and wife-beating — crimes that were more likely to be prosecuted among blacks — while omitting murder and robbery. The legislative intent relied heavily on the unequal enforcement of the law.

The disenfranchisement campaign swept black Americans from elected office and knocked them off the voting rolls. There were suddenly counties in the South where black people outnumbered their white neighbors by four to one but where not a single black name could be found on the voting rolls.

Black people who fled the South found that the states in the North had also begun to adopt disenfranchisement laws as their black populations grew.

This shameful legacy is plainly visible today in statistics showing that black people represent 40 percent of the disenfranchisement cases but only about 12 percent of the national population. The broader community, which was once indifferent to this problem, has begun to take notice since the states have embraced new sentencing policies that transform drug misdemeanors into felonies, driving up the prison population sevenfold, to an eye-popping 1.4 million today from a mere 200,000 in the 1970's.

With the population of ex-felons at more than 13 million and growing, the country has no choice but to revisit laws that strip people of the right to vote while permanently consigning them to the margins of society.

Neither Republicans nor Democrats are rushing to associate themselves with a campaign to restore the vote to former felons. The general public, however, understands clearly that the right to vote is a basic human right. Restoring voting rights to former felons would move the United States closer to its peers in the democratic world — and closer to its founding ideals. It would also drive a stake through one of the last relics of an ugly racist past.

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## Justice cracks down on voter fraud

Audrey Hudson  
THE WASHINGTON TIMES

Published 10/31/2002

*Voter Fraud*

The Justice Department has ordered investigations and close monitoring of polls this Election Day because of increased reports of voter fraud throughout the country.

Attorney General John Ashcroft has directed U.S. attorneys to appoint election officers to deter discrimination and voter fraud and to prosecute violators vigorously under the Voting Integrity Initiative.

"Our goal here is to work hand in hand with civil rights leaders and state and local election officials to prevent violations and bring offenders to justice," said Jorge Martinez, spokesman for the Justice Department.

Voter fraud has been reported this year in Arkansas, South Dakota, California, Louisiana, Nevada, Kentucky, Iowa, Arizona, Rhode Island, New York and Minnesota in federal and local elections.

One of the most bizarre cases occurred in the Minnesota town of Coates, population 163, where 94 voter registration forms had false addresses matching that of Jake's Strip Club. Patrons and dancers registered to vote to oust City Council members who had shut down the club, authorities said.

In Arkansas, Democrats said a former staffer hired two teenagers to recruit voters, but then used a phone book to register hundreds of unwary residents, including dead people and businesses.

Republicans say election fraud is rampant and county clerks often are not requiring identification.

Democrats say demand for identification amounts to harassment and that Republicans are intimidating voters.

"With Election Day a week away, we have already seen a disturbing number of incidents in which Republican operatives are working to chill voter turnout," said Terry McAuliffe, chairman of the Democratic National Committee.

Senate Majority Leader Tom Daschle said Republicans have targeted minority groups for intimidation. "In my state of South Dakota, we are now seeing a concerted Republican effort to make allegations and launch initiatives intended to suppress Native American voting," he said. "These efforts appear to be motivated more by partisan politics than a concern with clean elections."

Marc Racicot, chairman of the Republican National Committee, called the assertions by Mr. Daschle and Mr. McAuliffe "absurd and racially charged."

"They have set about to twist and pervert a normal and traditional effort to assure voter integrity, routinely undertaken by both parties, into something that would be outrageous and illegal if it were true," Mr. Racicot said.

In 25 South Dakota counties, state and federal officials are investigating suspected voter fraud and believe one Democratic operative is linked to 1,750 applications for absentee ballots. Becky Red Earth-Villeda was fired by the Democratic Party after the charges surfaced.

"A dead woman signed up twice to vote in two different counties — very active this woman," said Christine Iverson, spokeswoman for Republican Rep. John Thune, who is challenging Democratic Sen. Tim Johnson.

Justice Department officials Tuesday will monitor polls in Alabama, Arizona, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, West Virginia and Texas.

In other published reports of voter fraud:

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- A Louisiana parish (county) councilman is under investigation in a suspected vote-buying scheme and three other elected officials may be linked, Baton Rouge's the Advocate reported.

- FBI agents seized voter records from Nye County, Nev., offices to investigate suspected voter fraud.

- Two Republicans in California have been sentenced to four months in jail after pleading guilty to voter fraud for forging signatures, the Los Angeles Times reported.

- Iowa residents are receiving absentee ballots unsolicited in the mail.

- A Connecticut state representative who lost the Democratic primary last month was placed under investigation for supposedly helping seniors fill out absentee ballots in violation of state law, the Hartford Courant reported.

- The Oklahoma State Bureau of Investigation is examining suspected voter fraud in a Democratic race for Adair County commissioner.

- Three Arizona county officials have been indicted on charges of election fraud and helping illegal aliens to vote.

- In Rhode Island, Providence police are investigating a complaint by a senior citizen who said she was forced to turn over her ballot at a home for the elderly.

- In Texas, 16,000 dead or ineligible voters remain on the voting rolls, "creating an environment that is ripe for fraud and abuse," said Ted Royer, spokesman for the Texas Republican Party.

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## Vote Fraud: Back to the Future

Well, everybody knows that election officials never cheat, and after all, nobody can prove they cheat. The only thing that we know is that they're all from the same political party. And nobody would ever think that they would dare violate their oaths of office. And if I sound cynical about it, I am.

—Attorney Albert Jordan

**P**ush-polling, like street money, gives an unsavory taint to the already maligned field of politics. But if there is any corruption that goes straight to the foundations of American democracy, it is vote fraud—a catchall term that includes ballot-box stuffing, phony voter registrations, and the manufacture of absentee ballot submissions. Nothing else in this book so convincingly proves that a free system such as ours, with its bias toward minimal control of the electoral process, keeps generating the same kinds of corruptions every few decades. This study of current vote fraud will remind us that we can never declare victory over, and we must be ever-vigilant about, corruption—particularly those practices that tempt politicians with the promise of power while operating in the shadows and on the hidden periphery of politics.

The idea of progress is fundamental to understanding the American character. As a people, we have always wanted to believe that the future is destined to be better than the past by dint of our unceasing

Vote Fraud

efforts at improvement, which we have usually managed to bring about. Unsavory practices such as election fraud belong in the dustbin of our discarded and long outgrown history. Surely, the ballot boxes in Texas are no longer stuffed! Votes are not stolen or manufactured anymore in Alabama! Elections in Philadelphia and California are certainly clean now! The press does not look for what it does not expect to find, and the public ignores the occasional muffled sounds emanating from ballot boxes hither and yon.

But the press and the public are in for a rude shock. Voting fraud is back, is becoming more serious with each passing election cycle, and soon—because of recent changes in the law—is destined to become even worse.<sup>1</sup> For our purposes here, we define voting fraud as any serious violation of election laws controlling the registration of voters or the casting of absentee, mail-in, or polling-site ballots. Many of the examples in this chapter are derived from local elections, but the corrupt practices certainly extend to elections for district, state, and national offices. After all, generally the same group of political party organizers, consultants, and precinct workers are employed at all levels. Christmas past and Christmas future are merging for those who profit from such perfidy. And it is past time for the press and public to receive a loud wake-up call, lest the ultimate corruption in a democratic system—the stealing of elections—becomes widespread, corroding trust in the essential process of democracy itself.

In this chapter, we focus on four U.S. locales—Philadelphia, Alabama, Texas, and California—to illustrate the current slide back to the bad old days of election fraud. Our interviews and other research have convinced us that we could just as easily have selected at least a dozen other states or many dozens of sizable cities to prove our thesis. The quartet we have chosen demonstrate the problem dramatically—maybe fulsomely. The scale of fraud may sometimes be small compared with the anything-goes days of a century ago, but several kinds of fraud are clearly ingrained and resurgent, and this trend ought to be of immediate and pressing concern to all people who care about the integrity of the American political system.

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## America's Sordid History of Voting Fraud

Our nation has a long and depressing history as a happy haven for the vote thief. For much of the last century and a good part of this one, elections in many states and localities became contests of the voting fraud capacities of various factions and parties. The chief question on Election Day sometimes was: who could manufacture the requisite number of votes most easily and shrewdly, giving the other side insufficient time to make necessary adjustments to its tallies and insufficient evidence to cry foul convincingly.

Sometimes no specific evidence of fraud was required to know it had taken place. For the 1844 election, New York City had a reasonably large voter pool of 41,000, but the turnout on Election Day was far more spectacular: 55,000, or 135 percent of the entire pool of voters! As one observer put it, "the dead filled in for the sick," and the city's dogs and cats must have been imbued with irresistible civic spirit, too.<sup>2</sup>

The nation as a whole got a taste of this kind of election snake oil in the 1876 presidential election, arguably the most corrupt in America's history before or since. On Election Day, Democrat Samuel J. Tilden of New York garnered about a quarter million more popular votes than Republican Rutherford B. Hayes of Ohio, and Tilden was the undisputed leader in states with 184 electoral votes (with 185 required for victory).<sup>3</sup> However, twenty electoral votes in Florida, Louisiana, South Carolina, and Oregon were in dispute. Tilden had actually carried the first three of these states, but GOP-controlled election boards disqualified enough Democratic votes, for dubious reasons, to potentially tip the states to Hayes. Congress established a fifteen-member electoral commission, supposedly nonpartisan, to arbitrate the disputes, but the commission's partisan breakdown turned out to be eight Republicans to seven Democrats. As a result, every single controversial electoral vote was awarded to Hayes by a vote of eight-to-seven, and Hayes took office in 1877—and was called "His Fraudulency" by Democrats throughout his one term.

Historians and political scientists faithfully cataloged the abominable arts that were practiced at America's polls throughout the

centuries. Not long after the Hayes–Tilden election, for example, the "use of direct bribery in the United States" became "widespread."<sup>4</sup> Most states and large localities began formally registering voters in this period, and it thus became more difficult to simply stuff the ballot box or hire so-called floaters or repeaters to vote twice or thrice.<sup>5</sup> Resourceful political organizers changed tactics and began to buy votes on a large scale. One study in 1892 concluded that almost 16 percent of all voters in Connecticut were "purchasable."<sup>6</sup> In 1910, a judge in Adams County, Ohio, convicted 1,679 persons of selling their votes—more than a quarter of all the electors; further, his inquiries showed that fully 85 percent of the county's voters had engaged in buying or selling their votes at some time in their lives!<sup>7</sup>

Ballot-box stuffing was not abandoned everywhere, of course, as suggested by the exceedingly close 1960 presidential election, which Democrat John F. Kennedy won over Republican Richard M. Nixon by only 118,574 votes.<sup>8</sup> Strong suspicions exist that the Illinois electoral votes were stolen for Kennedy by Mayor Richard J. Daley, who late on election night magically produced just enough of a massive margin in Chicago to overcome Nixon's large lead in the rest of the state. (Thanks to a 319,000-vote advantage in Chicago, Kennedy won a paper-thin victory of 8,858 out of more than 4.7 million votes cast in the state—and thus captured all twenty-seven Illinois electors.)

The loss of Illinois would have reduced Kennedy's Electoral College majority edge to just six, and had he lost Texas as well, the election would have been Nixon's. In Texas, too, substantial voter fraud may well have occurred, though it is impossible to say whether fraud accounted for Kennedy's entire 46,242-vote majority out of over 2.3 million votes cast. One thing is for certain, though: Kennedy's running mate, U.S. Senator Lyndon B. Johnson of Texas, knew where all the votes were buried, and he had practiced electoral skulduggery before.<sup>9</sup> Having lost an agonizingly close U.S. Senate race in 1941 to former Governor Pappy O'Daniel, whose supporters may have stolen it, Johnson was determined to turn the tables when he ran again in 1948. LBJ's alliance with South Texas's political boss, Judge George Parr, known as the "Duke of Duval County," helped him do it. As in 1941, the Democratic primary battle between Congressman Johnson and former Governor Coke Stevenson was as

right as a tick, and the vote was so close it all came down to Voting Box 13 in Alice, Texas, in the heart of Parr's territory. Several days after the election, Parr's precinct man in charge of Box 13, Luis Salas, "found" 203 more votes, 202 of them for Johnson.<sup>10</sup> Amazingly, these good citizens had voted in alphabetical order, with the same handwriting and blue pen.<sup>11</sup> Moreover, the discovered ballots gave the victory to LBJ by a statewide margin of only 87 votes. Thus was a U.S. senator created by corruption and sent on his path to the Oval Office.

While there is little to admire in the low standards Johnson set, his sins must be interpreted in context. Voting fraud was a way of life in parts of Texas in the 1940s, just as it has been, at various times, in Chicago, Louisiana, West Virginia, New Jersey, and many other places. For much of our history vote fraud has been as American as (sour) apple pie. This is a humbling and sobering reality, and we need to remember this whenever we feel the urge to sanctimoniously condemn wide-scale fraud in other countries' elections. Election reformers still have a full plate right here in the United States.

### The Philadelphia Story

The city where the American democracy was born is now proof of America's continuing corruption of the electoral process.<sup>12</sup> In 1993, a special election was held to fill the vacated 2nd Senatorial District seat in Philadelphia, Pennsylvania. The contestants for the seat, which would determine the balance of power in the state Senate, were Republican Bruce Marks and Democrat William Stinson. Even though the district was substantially Democratic, Marks had come close to winning it in 1990 against veteran state senator Francis Lynch, and after Lynch's death in May 1993, Marks decided to try again. His new opponent, Stinson, was often described as a classic Philly Democratic pol, a deputy mayor who lost a 1991 Democratic primary for a city council seat by a mere seventeen votes.

The battle was fierce, and the campaign attracted statewide attention because the Senate was then divided evenly, twenty-four Democrats to twenty-four Republicans. With a pro-GOP, anti-

Clinton tide running across the country in fall 1993, Marks appeared to surge. Sure enough, Marks received more Election Day votes (those cast in polling places on the day of the election) than his opponent—19,691 to Stinson's 19,127. Yet Stinson garnered an extraordinary proportion of the absentee ballots to turn the tide—1,396 to Marks's 371, yielding totals of 20,523 and 20,062, respectively. The Philadelphia County Commissioners (Democrats Margaret Tartaglione and Alexander Talmadge Jr., and Republican John F. Kane), sitting in their capacity as the County Board of Elections, certified Stinson as the victor of the race on November 18, 1993. State Democrats arranged for Stinson to be sworn into office quickly, before a court could issue an injunction to stop it.

While the board's imprimatur ordinarily would have marked the conclusion of the election, in the case of the Second District it marked the beginning of a lengthy inquiry, by the end of which Stinson was indicted (though not convicted) and Judge Clarence Newcomer of the U.S. District Court for the Eastern District of Pennsylvania condemned the commissioners for permitting blatant violations of state election law and overturned the result of the special election. Stinson was eventually cleared of criminal charges of absentee ballot fraud, but in the civil proceedings, Newcomer found sufficient proof to implicate Stinson in a conspiracy to steal the election, and Stinson was ousted from office. (Several Stinson staffers were even less fortunate; their involvement in the fraud resulted in criminal prosecution and conviction.<sup>13</sup>) *Marks v. Stinson*,<sup>14</sup> the conclusion of candidate Marks's civil challenge to Stinson's victory, marked an extraordinary but necessary intervention of a federal judge into the state's political process to redress claims of civil and voting rights violations. Newcomer's order to certify Marks as the winner on the basis of the machine vote total without considering the absentee ballots cast appears to be unprecedented in modern times.<sup>15</sup>

The vote fraud was documented beyond question.<sup>16</sup> Despite Pennsylvania's strict laws regarding application for, completion, and return of absentee ballots,<sup>17</sup> the Stinson campaign and related organizations engaged in the systematic distribution and collection of absentee ballots, which circumvented the normal process. More remarkably, the Democratic members of the Board of Elections themselves were implicated in the conspiracy, despite the procedural

safeguards they were legally required to observe in order to prevent absentee voting fraud. The electoral process was corrupted not just by a campaign but by those charged with overseeing it.

The competition for the Second District seat was tight enough to convince members of the Stinson organization that fraud was required to ensure victory. In both predominantly white and minority areas, Stinson's campaign and related Democratic Party organizations engaged in a widespread effort to file fraudulent applications for absentee ballots and then ensure the proper choice was made when applicants returned their ballots. Some of the applicants did not realize what they were doing, some were not even registered, and others were browbeaten and intimidated. The Democratic commissioners played a key role in the plot; as Marks recalled, they and their staffs "illegally [gave] absentee ballots directly to my opponent's campaign and to [Democratic] committee people."<sup>18</sup>

Absentee voting in Pennsylvania is not unlike that of most states: exacting statutory guidelines determine the method of application, completion, return, and processing of an absentee ballot. Absence from the state or county of residence, or disability, are legitimate reasons to vote absentee. An absentee ballot cannot be requested more than fifty days prior to the election and must be requested at least seven days before the election. A voter is required to submit an absentee ballot request to his or her local board of elections by the Tuesday prior to the election. Although the Philadelphia board's official policy required a check of each applicant's signature against the file copy, in actual practice it did not do so. When any absentee application is approved, statutory language requires the board of elections to return an absentee ballot only to the applicant, who must mail or return the ballot to the board in person prior to the Friday preceding the election.

The Stinson campaign used two distinct ploys to put illegally obtained absentee votes in its column. First, from July through September of 1993, campaign workers solicited hundreds of absentee applications as part of a canvass and registration effort in predominantly white Democratic precincts. Contrary to election law, "many persons who were hesitant to register because they simply did not want to go to the polls were told that they could fill out an absentee ballot application and obtain a ballot out of convenience."<sup>19</sup> The

dates of the applications were left blank to conceal the fact that they were requested either before or after the filing deadline. When William Jones, a Stinson worker, approached the candidate to express his concern over the scheme, Stinson told him "that he was never going to lose another election because of absentee ballots."<sup>20</sup> Robert O'Brien, a campaign staffer, instructed subordinates to deliver the completed applications to the election board's office. As a result, the board sent over 500 ballots to the campaign, which O'Brien then distributed to workers, who proceeded to take them to homes of voters. As Stinson had instructed, the workers directed voters to "either check off the straight Democratic box, or to check off the individual Democratic names, and then to return the completed absentee ballot to O'Brien."<sup>21</sup> About 450 ballots supporting Stinson found their way back in this manner.

More dubious still was the Stinson effort to elicit absentee applications and "correctly" complete ballot packages in Hispanic and African-American precincts. Late in the campaign, polling results provided by the Democratic State Committee indicated Stinson was trailing Marks. The decision was made to target minority precincts in a last-ditch effort to turn the tide in his favor. In essence, the Stinson campaign workers convinced some minority voters that, in Marks's words, "if they wanted to vote from the convenience of their own home that they could do so, and they could just fill out the application and say that they were out of town or make up some medical reason."<sup>22</sup> Ruth Birchett, who directed the Stinson campaign in minority areas, was explicitly assured by both the candidate and one of the election board's Democratic commissioners that the scheme was legitimate, although others in the Stinson organization recalled that a hard-edged cynicism permeated the effort. For example, one staffer reported that the not-funny "joke" in the Stinson campaign was that the Hispanics would sign anything," a problem exacerbated by the fact that the absentee ballot application included no Spanish language instructions. Some Hispanics were apparently not even aware they were voting. Lydia Colon, for example, thought she was signing a form to request removal of a pile of refuse from her back yard. However, the Democratic canvasser who connived her into signing the ballot did not count on her subsequent decision to go to her polling place on election day and attempt to vote.<sup>23</sup>

The execution of the minority plan mirrored the one used for the majority white precincts: applications were solicited and submitted by the Stinson workers, who then received, distributed, and returned about 600 ballots. Likewise, campaign workers instructed voters to mark their ballots for Stinson. The special twist was that the field staffers were paid one dollar per correctly marked ballot returned. In other words, the Stinson workers distributing the applications and ballots took the supposedly neutral polling place to the voters while serving simultaneously as remunerated flushers and haulers.

The Stinson organization received the funds to implement this plan from several sources, including the Committee for a Democratic Majority PAC (\$4,000) and a PAC associated with Democratic State Senator Vincent Fumo (\$4,000).<sup>24</sup> The money also paid for a phone bank operated in English and Spanish, to inform voters of the "new way to vote." From direct testimony, the dates of the street money contributions, and the receipts retained for payments to workers, Judge Newcomer determined that the ballots—cast overwhelmingly for Stinson—could not have been returned prior to the absentee ballot deadline. Further, it was clear to the court that campaign workers aided completion of the ballots "in the homes of voters and often directed, coerced, and/or intimidated voters to vote for Stinson; . . . [and] the campaign workers had a political and financial interest in obtaining votes for Stinson."<sup>25</sup>

Compounding this disturbing pattern was the active assistance given the Stinson campaign by two election commissioners, both Democrats. These officials casually waived normal procedures, helped to process absentee applications for unregistered citizens, and permitted campaign workers to distribute ballots—all in contravention of the rules, and all consciously designed to result in a Stinson victory.<sup>26</sup> Judge Newcomer reserved some of his harshest language for Democratic commissioners Talmadge and Tartaglione, since they "could have prevented much of the illegal activity that occurred even if the Stinson campaign had acted illegally."<sup>27</sup> If the commissioners had required that existing written procedures be followed, for example, the wrongdoing that altered the outcome of the election could not have happened. As Republican election attorney Jack Connors, who worked on this case, suggested, "You had

built-in arrogance of power in a local board of elections that had been in one party's control for over twenty years. The reason why this case is so outrageous . . . was that they thought they were going to get away with this."<sup>28</sup>

This particular instance of fraud, unlike so many others, had a just ending that served as a powerful warning to vote-tamperers. After concluding that nearly 600 absentee ballots had been cast after the deadline by unregistered people, Judge Newcomer stated firmly that "Bruce Marks would have won the 1993 Special Election in the Second Senatorial District" had it not been for the Stinson organization's violation of state election law.<sup>29</sup> Newcomer then evicted Stinson from the state Senate, gave his seat to Marks, and with it, control of the Senate to the Republican Party.

But we need to remember that the Philadelphia fraud was widespread, well established, relatively easy to accomplish, and stayed hidden for a good while. Only an aggressive, generously financed, and thoroughly politicized legal assault on the system that stole an election managed to right the balloting wrong. Most candidates are not so well positioned to pursue suspected fraud—and as a consequence, one suspects, similar or more subtle shenanigans elsewhere may go undetected and unexposed.

### **Sweet Home Alabama: Southern Fried Voting Fraud**

As Philadelphia's state Senate election suggests, it is the close election that often leads to revelations about voting fraud. (The candidates in close or disputed races are almost inevitably involved in court brawls, and their investigations can turn over rocks that hide sleazy shenanigans.)

Such has recently proved to be the case in Alabama as well. The 1994 election for chief justice of the state Supreme Court yielded a dead heat, with Democratic incumbent Sonny Hornsby losing to Republican Perry Hooper Sr. by fewer than 300 votes out of 1.2 million cast. It had been a high-stakes race, with the trial lawyers backing their former association president (Hornsby) with at least

\$198,519 in campaign expenditures and Alabama business persons and groups spending many tens of thousands of dollars on their favorite son (Hooper).<sup>30</sup> To maintain his narrow lead, Hooper and his supporters launched a preemptive legal challenge after suspecting widespread fraud. Hooper's legal maneuvers were aimed at preventing the counting of 1,700 disputed absentee ballots—ballots that came disproportionately from solidly Democratic counties. The litigation was ultimately successful, permitting Hooper to finally be sworn in as the state's chief justice on October 20, 1995—eleven months after the election.<sup>31</sup> And along the way to this belated victory, the Hooper forces uncovered some disturbing facts about Alabama's electoral process.

Once again, it is the absentee ballots that present an occasion for sin. In Greene County, a heavily Democratic part of Alabama's "black belt," almost a third of the vote was cast absentee, compared to well under 10 percent just about everywhere else. Dozens of absentee ballots were mailed by elections officials to a nonexistent post office box, with many of the ballots allegedly being picked up at the post office by an unknown individual.<sup>32</sup> Local resident Paul Harrington readily observed the telltale signs of absentee fraud. During a meeting with the clerk of the Circuit Court of Greene County (who served as the manager of absentee ballots), Harrington found the clerk had discovered that

approximately 60 applications for absentee ballots were received requesting that the absentee ballots be sent to Post Office Box 115, Eutaw, Alabama, 35462. According to [the clerk], however, she later learned that no such post office box existed. However, as absentee election manager, she was unable to recover all the ballots. . . . Approximately 10 to 20 were . . . picked up by someone from the post office and the post office was unable to identify the individual or individuals retrieving the ballots.<sup>33</sup>

Several dozen other absentees were sent to two Democratic officials, with the party chairman's home listed as the "permanent address" for many of the absentee voters.<sup>34</sup> Other absentee ballots went to the local sewer and water authority, a woman who had moved out of

the county six months earlier, and a man who had died well before the absentee balloting period began. This dead man somehow voted, by the way, while other legitimate voters showed up at Greene County polls on Election Day only to be told they were ineligible because they had supposedly already voted by absentee.<sup>35</sup>

Similar problems cropped up in other Alabama localities. In Houston County, in the far southeast corner of Alabama, a man "dead for seven years," according to his wife, has regularly been recorded as voting by absentee,<sup>36</sup> despite the difficulties in delivering a ballot to the afterlife. Reportedly, political activists would also provide absentees to eligible persons and then take them away after the ballot had been signed, with candidate choices marked only in pencil (or not marked by the presumed voter at all).

Then there were the helpful visits to nursing homes in Montgomery and elsewhere. For example, a young woman observed with absentee ballot materials showed up at the capital city's Tyson Manor Nursing Home shortly before the 1994 elections and "assisted" incapacitated and even comatose patients with their ballots. As one visitor reported: "I had seen [a particular patient] in the bed many times in the past . . . [and] I thought she was comatose . . . [she] was incapable of filling out the forms or even making a mark on the papers. She died three days after this event, which would have been before the election on November 8, 1994."<sup>37</sup> A patient with severe Alzheimer's disease supposedly cast a ballot in another nursing home even though her daughter testified that this was not possible and the woman had been removed from the voting rolls at the family's request the previous summer.<sup>38</sup> As the daughter recalled, "her name still appeared on the list in November, 1994," even though "no member of the family" had applied for an absentee ballot.<sup>39</sup>

Suspicious circumstances were identified all over the Alabama map. Some voting machines were apparently programmed to facilitate voting for Democratic candidates and to discourage GOP votes,<sup>40</sup> according to an affidavit of John Russell Campbell:

You could vote the straight Republican ticket by punching one button at the top of the Republican column and it would light up all of the officials' names in the Republican column. And



"EVERYBODY'S DOIN' IT": BIPARTISAN CORRUPTION

then you could reach over and punch the button of individual Democratic candidates or independent candidates and it would light up and cancel the [individual] light on the Republican side and then . . . the votes would be cast. You could not do that if you were voting the straight Democratic ticket. If you punched the light at the top of the Democratic ticket, it would light up the entire Democratic ticket. But if you reached over and tried to vote individual Republican candidates, nothing would happen. The light wouldn't come on and it wouldn't cancel the light on the individual Democratic candidate.

Many absentee ballots from unregistered individuals and other unqualified people were counted by local election officials even though the ballots were challenged by authorized poll workers. Under state law, these suspect ballots are supposed to be separated out from unchallenged ballots so that they can be carefully reviewed; instead, the signed cover sheets were removed and they were mixed in with all other ballots—so it was impossible to identify and retrieve them.<sup>41</sup> The situation apparently approached the proportions of a parody, Campbell said:

Despite my requests (over about a thirty-minute period of time), the Committee continued to open affidavit envelopes and separate them from the ballots at a feverish pace. Whenever I was able to stop the process of opening the affidavit envelopes at one end of the table, the Committee members at the other end would frantically begin ripping envelopes open and separating the ballots.

And despite the closeness of the election, which was obvious to everyone on election evening, the ballots were not secured in many counties. Some ballot boxes were missing, votes from one precinct were combined with another, seals on various containers of votes had been broken, and ballot boxes were openly available in unwatched public rooms.<sup>42</sup>

John Campbell, the dumbstruck Alabama poll watcher, summed up his reactions after a long election day of observing arbitrary, capricious, and downright illegal actions by local officials charged

*Vote Fraud*

with safeguarding the electoral process: "When I was asked to serve as a Ballot Security Attorney, I could not believe that the election officials in Wilcox County would be capable of tolerating, much less participating in, the type of activities that were described to me as having occurred in the past. Not only was it as bad as it had been described to me, it was worse. I was shocked."<sup>43</sup>

Somewhat surprisingly, Campbell's description of Wilcox County's elections received backing from Dan Warren of the county's own Board of Registrars. When we contacted Warren, he refused to address Campbell's specific allegations but said they were "the tip of the iceberg" and that "there will never be a fair election in Wilcox County."<sup>44</sup>

Of course, there is no mystery about the systemic source of Alabama voting corruption. Election laws and procedures are followed—or ignored—in each county at the discretion of a board comprised of the local sheriff, the probate judge, and the circuit court clerk. Frequently, these individuals are all members of the same political party. An experienced Alabama attorney, currently involved in the search for voting fraud in his state's 1994 elections, offered us an overview of the state's election system:

Do y'all understand how the system is rigged to begin with? Basically what happens is that you're not going to second-guess elections in the absence of strict proof. And then what you do is make sure the people who control the proof are in the inner circle of your party. And therefore, as the process unwinds in the wee hours of the [election] night, based on the information that's available from the media outlets, the inner circle comes up with what [votes] they need. Who's going to rat on them? Who's going to tell on them? Well, everybody knows that election officials never cheat, and after all, nobody can prove they cheat. The only thing that we know is that they're all from the same political party. And nobody would ever think that they would dare violate their oaths of office. And if I sound cynical about it, I am.<sup>45</sup>

All in all, the Alabama electoral process does not seem likely to be included in the state's promotional brochures. Vote fraud seems to

be another deeply ingrained custom in a traditional state slow to change.

## California: The Golden State for Vote Fraud

If mega-state California, as advertised, is the trendsetter for the rest of America, voting fraud will truly be a Malibu-sized wave of the future. For the Golden State has exceptionally serious difficulties in its system of registration, absentee balloting, and election-day voting.

The fundamental difference between California and Philadelphia or Alabama is that the breakdown of the electoral process begins at a much earlier stage than absentee balloting. The voter registration setup is the first source of trouble; not to put too fine a point on it, it is nothing short of a disgraceful mess. California has not thoroughly purged its voting rolls of those who are no longer eligible to vote since 1979, when advocates of greater political participation secured passage of a law permitting the removal of voters' names from the rolls only by means of an inconclusive "negative purge." Voters who have not cast a ballot in two consecutive general elections are sent a postcard asking whether they still live at the listed address. Only if the card is returned as undeliverable is the name stricken. So long as the card is not returned, for whatever reason, the name stays.

Many voters who have died or moved are thus retained on the registration rolls, and as a result there are literally millions of inaccurate or wrongful registrations on file. Many voters have moved out of California but remain on the rolls. Some have simply changed addresses within the state and have duplicate registrations (one each in the new and old locations). In many localities of California, a duplicate registration is recorded if a voter who has moved within a city or county makes the slightest addition or deletion (for example, of an initial or nickname) when he re-registers. A sample of 940 voters requesting absentee ballots in Tulare County discovered, for example, that 92 people had relocated (according to other voters currently residing at each address). Partial voter files showed 20 of this group were recorded as voting in the 1994 general election at their old address. It is not clear whether they returned to vote there,

or they had voted twice (at an old and new address), or there was some other explanation.<sup>46</sup> Other voters have died or been convicted of felonies; either condition normally makes a person ineligible (though a Chicagoan might disagree). And at least a few individuals register twice in order to vote twice. In 1994, there were cases of people (1) voting both absentee *and* on Election Day, (2) voting two absentee ballots, and (3) voting at two different polling places on Election Day.<sup>47</sup>

Phony registrations encourage shenanigans in any place, and California's massively erroneous voter list is an engraved invitation to commit fraud. Incredibly, the most recent official estimates of the "deadwood" on the California voter rolls range from 14 percent to 24 percent of the more than 14 million registered voter total—meaning between 2 million and 3.4 million phony registrations crowd the books.<sup>48</sup> Every election cycle, deadwood voters cause state and local governments to waste \$5 to \$8 million of taxpayers' money printing and mailing voter pamphlets, unneeded ballots, and the like.<sup>49</sup>

Among the many factors responsible for this monumental ineptitude is the failure of bureaucrats at various levels to share death and incarceration records with registrars, as they are supposed to do;<sup>50</sup> the appalling lack of a centralized statewide voter registration list that could at least reduce or eliminate the extraordinary number of duplicate registrations; and most important for our purposes, the existence of a burgeoning, legal campaign industry whose *raison d'être* is the registration of citizens. Political parties, individual campaigns, and ideological interest groups contract with the consulting organizations to find and register eligible persons at a per-head price that ranges from \$1 to \$10. The profit incentive demands a large volume of registrants, obviously, and so the paid solicitors avariciously sign up whoever they can find, often without regard to the legal niceties, including illegal and legal aliens, some juveniles and infants, fictitious individuals, companion animals (known in less sensitive states as "pets"), and even the dead (or "life-challenged" voters). As one California elections official asserted, "You're just asking for trouble. . . . Anytime you pay to register people, you're going to have fraud."<sup>51</sup>

Because California registrars have "a ministerial duty to accept a

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registration without investigation, absent any challenge to its validity," the state's registration system is "a system of self-certification, [with no] certainty that a registrant is who he or she claims to be."<sup>52</sup> Since it is widely acknowledged that prosecution for registration fraud is given a very low priority by law enforcement agencies, this is yet another green light to sloppy or unethical work by paid voter solicitors.<sup>53</sup>

The lamentable results of widespread registration solicitation are to be found all over California. In the city of Los Angeles, paid solicitors added over 4,000 fraudulent registrations just in 1992.<sup>54</sup> In Glendale, bounty hunters "found" 190 unregistered voters in a single apartment building, and signed them up (along with a dog)—even though many were apparently already registered.<sup>55</sup> Jailed felons have registered while incarcerated, and other new voters have illegally listed business addresses (including department stores) as their supposed place of abode.<sup>56</sup> Illegal and legal aliens are, without question, on the rolls in many areas. A single precinct in San Diego County was found to have 30 verifiable legal aliens out of just 313 registered voters.<sup>57</sup> Illegals voted in Fresno and Tulare County in November 1994;<sup>58</sup> and a prominent legal alien—a Mexican businessman and a publisher of a Spanish language newspaper—registered to vote in 1987, while in the United States on a tourist visa, and cast a ballot in both 1992 and 1994 despite his lack of American citizenship.<sup>59</sup> Even Mario Aburto Martinez, the Mexican citizen who assassinated the ruling party's 1994 presidential nominee Luis Donaldo Colosio in Tijuana, was a registered voter in San Pedro.<sup>60</sup>

The use of paid solicitors for partisan registration efforts has plagued California for a decade or longer. The Republican Party, finding its share of the registration rolls lacking, engaged in a year-round registration drive as early as 1986. During that year, the party employed approximately 2,000 bounty hunters and paid them \$1 to \$4 per Republican registrant as part of its centralized, coordinated registration campaign. The simultaneous Democratic Party registration drive, though less organized, also utilized paid workers, employing 250 bounty hunters in Orange County alone.<sup>61</sup> In one recent case of bounty hunter abuse, two workers retained by political consultant Michael Long for Republican Brooks Firestone's campaign for the state assembly were arrested for registering the inhabitants of

a graveyard and were actually charged with election fraud. Long's firm paid the two, and approximately fifty others, about \$3 per completed Republican registration card. Unlike their companions, the two copied names from tombstones and submitted the cards to their employer, who reviewed the cards and then forwarded them to the Firestone campaign, which in turn submitted the cards to county officials.

Neither Firestone nor Long's firm was apparently aware the registration cards were fraudulent, and Firestone noted, "We had no intention of engaging in fraudulent registration whatsoever. . . . It wouldn't do us any good, because dead people don't vote."<sup>62</sup> Of course, while the dead logically cannot vote, neither should they be able to register. No evidence suggests that the Firestone campaign intended to capitalize on the life-challenged registrants, but less scrupulous candidates may not find the legal or ethical principles involved very compelling.

The tried-and-true fraud associated with absentee balloting is part of the California picture, too, mirroring the conditions already identified in Philadelphia and Alabama. Jim Boren, reporter for the *Fresno Bee*, described the bold and "sophisticated" pattern of activity by campaign staffers and candidates: "They know what the exact turnaround should be in neighborhoods. The campaigns mail the absentee requests to the elections office, and then they literally follow around the postmen and women as they deliver the absentee ballots back to the residences. They go up to the residences, offer people a stamp, and make sure they vote."

This harvesting of absentees (sometimes called "ballot farming") may simply seem like savvy politics, but violations of law are involved.<sup>63</sup> A recent *San Francisco Chronicle* investigation of one county's elections found that signatures on dozens of absentee ballot request forms did not match the registration signatures on file, yet the ballots were still mailed; and that 1,500 suspect absentee ballots were simply filed away and never referred to the district attorney for investigation.<sup>64</sup> At times, local candidates have directly obtained absentee ballots from the elections office and personally delivered the ballots to voters, entering their homes while the voters were casting them. Campaign workers have also punched holes in the ballots for voters, instructed people who to vote for, handed out free postage

stamps, or simply taken the completed ballots away with them, and occasionally engaged in intimidation of voters during the balloting process.<sup>65</sup> All of these activities can result in misdemeanor or felony charges under existing law. Two recent city council elections in Stockton and Inglewood have been overturned because of absentee ballot hanky-panky of this sort.<sup>66</sup>

Of course, the ultimate form of absentee balloting is voting by the dead. Many years ago, if you planned to remain politically active once deceased, you had to arrange burial in Chicago or Louisiana. Now, apparently, California is an acceptable alternative. For example, in Alameda County a deceased woman's 1994 absentee ballot was cast—the registrar suspects that either her daughter or roommate did it,<sup>67</sup> and in San Francisco one Lazarus who had passed away twelve years earlier (in April 1982) came back to vote in 1994.<sup>68</sup>

The dead are not the only unexpectedly energetic voters on election days in California. Some registered Golden Staters are such good citizens they vote twice—this a result of the widespread duplicate registrations mentioned earlier. In one study of five Central Valley counties following the 1994 general election, 3,300 voters were found to have registered twice. With only very partial records available on some of these voters, 90 were identified as having cast at least two ballots.<sup>69</sup> (Had all data been accessible, the number of "vote-early-and-often" citizens would almost certainly have been higher.) A number of people may also be voting under the names of registered voters who, for whatever reason, are not expected to show up at the polls. On general Election Day 1994 at a Kern County precinct, for instance, a woman was in the process of casting her ballot when another woman (with two female friends) entered the polling place and requested a ballot under the name of the woman who by chance was already in the voting booth. As the legitimate voter objected and stared in disbelief, the impersonator and her accomplices fled the area.<sup>70</sup>

As if all this were not enough to malign California's unsecured electoral system, the record-keeping and vote certification are so sloppy that almost nothing adds up correctly. When the state's Fair Elections Foundation, a nonprofit watchdog group, examined the November 1994 returns from seven counties, the county registrars inexplicably reported totals that differed by many thousands from the vote totals certified by the California secretary of state.<sup>71</sup> In Or-

ange County, the registrar claimed 627,223 votes had been cast but the secretary of state's office released a final count of 618,448. To make matters worse, the tallies by poll workers of votes cast in each precinct frequently differed from the tallies recorded by the county registrars. In Los Angeles County, fully 40 percent of the 6,104 precincts showed a disparity between the counts of the poll workers and the registrars.<sup>72</sup>

Computer software glitches may well account for some (though not all) of these errors. Still, the mistabulations add to the seeming haphazardness of the laid-back California elections process. When combined with the abundant evidence of voter fraud (both potential and actual), there is but one reasonable conclusion: let honest California elections officials beware, and let concerned citizens be about the business of reform.

These recent California experiences also point to a noteworthy irony that applies to other states and the nation as a whole: laws intended to encourage voting have sometimes become an entrée for vote fraud. The last quarter-century has seen an opening up of the electoral process almost everywhere, as regulations concerning registration and balloting were eased to maximize convenience and turnout. But undeniably there is a hidden cost to these benefits: the resurgence of fraud apparent around the country. Remedies that neatly cure one ill frequently and surprisingly cause another. Just as with well-intentioned campaign finance schemes, the "law" of unintended consequences prevails—and it is a rule rarely given much thought when many reforms are first designed.<sup>73</sup>

### Vote Fraud in Texas: The Wild, Wild Southwest

As we have already demonstrated in this chapter, the Lone Star state—whatever the extent of its electoral hijinks—will never walk alone in the field of voting fraud. Nevertheless, fraud in contemporary Texas is still breathtaking in its boldness and scope, amply fulfilling the state's "bigger and better" stereotype. Reformers bent on cleaning up political excesses had best hope that the state's informal slogan, "Don't Mess with Texas," does not extend to the registration and voting system.

One region or another of Texas features almost every breed of

fraud found in Philadelphia, Alabama, and California: voting by illegal aliens, ballots from the living dead, manipulation of the elderly, double voting, absentee ballot shenanigans, street money incentives, and so on. In addition, some traditions and laws unique to Texas create conditions that spawn even more corruption.

The most egregious of the state's election law provisions permits people to come to the polls on Election Day, and without a recorded registration, to cast a ballot as long as they sign a sworn statement swearing that they are in fact registered in that precinct.<sup>74</sup> These ballots are *not* kept separate so that they can be challenged or checked later. Just in Harris County (the Houston area), 6,707 individuals *who were actually ineligible* voted this way in the 1992 presidential election.<sup>75</sup> Of this substantial total, 1,262 had *never* been registered *anywhere*, and twenty-five of the illegal voters were *convicted felons* not permitted to vote because of their crimes.<sup>76</sup> It took Harris County seven months to conduct the check, long after the election results had been certified. And of course, once again no one knows whether the illegal ballots affected the election since these provisional votes were not segregated from the clearly legal ones. Incidentally, even though it is a felony for a person to "vote or attempt to vote in an election in which the person knows he is not eligible to vote," no punishment is designated for those who "unintentionally" violate the law. Surprise: not a single one of the 6,707 illegal voters was prosecuted because it is very difficult to prove criminal intent.<sup>77</sup> Nor was this merely a localized problem affecting Houston. In the same 1992 general election, over 3,000 unregistered, ineligible people cast a ballot in Tarrant County (the Fort Worth area).<sup>78</sup>

Moreover, Texas has an extraordinarily generous "early voting" system<sup>79</sup> that permits *anyone* age 65 or older, for instance, to use a mail-in ballot (the same kind of ballot as the absentee, except that senior citizens need not be away from home on Election Day or incapacitated to use it). Generally, as Texas examples will show, the more substitutes there are for in-person voting, and the more frequently they are used, the greater the opportunities for voter fraud. To make matters worse, Texas does not require mail-ins and absentee ballots to be accompanied by a witness or notary signature on the sealed envelope that actually contains the completed ballot.<sup>80</sup> Nor is even a full signature by the *voter* necessary on this envelope, even

though a space is provided. Many elections officials permit any mark (an "X" or a check) to suffice—making it impossible to verify the voter's signature and easing fraudulent efforts by people who come into possession of absentee or mail-in ballots. In addition, some registrars do not seem to match and carefully compare the signatures on the mail-in ballot application and the actual ballot envelope. One watchdog group counts over 200 instances of apparently differing signatures on the applications and envelopes in the 1994 Democratic primaries just in Galveston County; several races were decided by fewer than 200 votes.<sup>81</sup> A follow-up investigation by the Galveston district attorney's office found "some violations of the Texas Election Code," including a mentally and physically incapacitated voter's ballot being cast by a caretaker who lived in the voter's home.<sup>82</sup>

Some of the elderly—especially the infirm and the poor—are vulnerable to manipulation under this Texas regime. A Lone Star state form of street money pays individuals to organize absentee and mail-in voters.<sup>83</sup> (In Hispanic areas these activists, each paid around \$100 per week, are referred to as the *politiqueras*.) Typical of these activists' targets in recent elections was Edward Taylor of Houston, a seventy-nine-year-old retiree. Prior to a 1993 municipal election, a woman Taylor had never met before arrived at his home and presented him with an absentee ballot *application*, which she mailed after Taylor signed it. Very shortly after the postman delivered the ballot to Taylor's mailbox, the woman returned. Taylor related the events that followed in a sworn affidavit:

Shortly after I received the ballot, the same woman, in the company of a man, came to my house. . . . She used a hole punch to vote my ballot. She then told me to sign my ballot. This woman then put my ballot in the envelope as I was not allowed to mail in my ballot. The woman then took my ballot with her when she left.<sup>84</sup>

As is needless to point out, this entire procedure is not just unorthodox but blatantly illegal.<sup>85</sup>

Compared with some others, Taylor was well treated, and actually given a role—however inferior—in the requesting and casting

of his ballot. One married couple, Maria and Jesus Casteneda, were misled when a "helper" showed up at their house.<sup>86</sup> Instead of aiding them in marking their ballots for an independent candidate for city clerk, David Pena, as the couple requested, the helper tricked them into checking the "straight Democratic" ticket box. As Jesus Casteneda recalled, "I later found out that I had not actually voted for David Pena and that [the helper] made me believe I did."<sup>87</sup> Another "helper" aided a husband and wife, Charles and Gloria Scott, by voting their ballots and falsifying the certificate signatures on the carrier envelopes.<sup>88</sup> Even more remarkable was the story of Mr. and Mrs. Jim Cheney Jr.<sup>89</sup> Neither of the Cheneys applied for an absentee ballot in 1993, but two arrived anyway. (Someone unknown to them did the application paperwork.) Soon after, Mrs. Cheney received a woman visitor who offered to take her to the polls on Election Day. She declined, indicating she did not plan to vote; she also pointed out the two unrequested ballots, which the visitor cheerfully took off Mrs. Cheney's hands. Of course, the ballots were cast and counted in the election. This was particularly noteworthy in the case of Mr. Cheney, who had died in September 1992. Mr. Cheney came back again to his old home in March 1994, when he seemingly could not resist applying for an absentee ballot to vote in the federal and state primary elections. (Fortunately, the bogus application was rejected this time by an alert registrar.)

In South Texas, meanwhile, remarkably little has changed politically since the days of LBJ's vote stealing. The sheriff is still the premiere power in most counties, with great influence over the electoral process. Some public officials (especially sheriffs) are again on the take, with drugs rather than moonshine being the source of their ill-gotten gains.<sup>90</sup> And all kinds of fraudulent shenanigans remain a staple of political life there. In recent elections, substantial charges included voting by non-citizens, the mailing of blocks of absentee ballots directly to a political party's headquarters, voting twice, intimidation of voters at the polling places, and campaign workers following around postal delivery persons in order to take mail-in ballots from voters' mailboxes shortly after they were delivered.<sup>91</sup> Poll workers have also observed official election judges—supposedly neutral arbiters—exhorting voters in line at the polling places to support a favored candidate or party.<sup>92</sup> And the beat goes on. . . .

To paraphrase John Donne, no state (except Hawaii) is an island, so Texas shares vote abuse practices with other parts of America. As in Philadelphia, fraud in Texas is bold. As in Alabama, Texas fraud is traditional and institutionalized. As in California, vote fraud in the Lone Star state is assisted by lax state laws that practically invite trouble. But as long-time residents of the state are fond of bragging to outsiders, everything is bigger in Texas, where vote fraud combines all of the polling problems observed elsewhere on our American journey.

### **Election Fraud in Perspective**

What conclusions are reasonable, now that this electoral tour of some diverse precincts is over? As we asserted at the outset, contrary to the belief of some that voter fraud is a thing of the past existing today only in isolated pockets, if at all, the evidence accumulated in this chapter's case studies strongly suggests a persistent pattern of criminal fraud that is well organized and a continuing part of the political culture in some areas. The fact that fraud is generally not recognized as a serious problem by press, public, and law enforcement creates the perfect environment for it to flourish.

The role played by the news media deserves a special comment. Many of the stories we have just reviewed received little or no national press attention, even when the local media carried news accounts. Perhaps they were seen merely as "isolated" incidents of interest only to the citizens directly affected. Remarkably, though, some of these cases of fraud attracted amazingly light attention from the local news organizations themselves. Partly, as noted at the outset, this results from the mistaken belief among journalists that vote fraud is no longer a serious problem. But it also reflects a lack of knowledge even among opinion makers about vote fraud's resurgence. Less charitably, the coverage vacuum may also be another indication of a disease some reporters may have contracted from extended contact with political professionals: a blasé attitude about some unsavory aspects of the electoral sausage-making process.

In contrast to the absence of the press, the alert reader has probably already noticed that Democrats feature prominently in almost all of the instances of voter fraud featured in this chapter. Before

Democrats take umbrage, and the Republicans mount a high horse, an explanation is in order. First, the GOP is fully capable of voting hijinks when circumstances permit. For example, the two Ventura County workers who were arrested in October 1994 for collecting the names of newly registered voters from tombstones were working on behalf of a Republican candidate for the legislature.

Another hotbed of Republican vote fraud is rural southeastern Kentucky, where a sizable number of GOP local candidates, consultants, and precinct workers have recently been caught paying off voters to cast their absentee ballots "correctly," among other offenses.<sup>93</sup> Several decades later, the price of a vote was still reasonable—five dollars or a half-pint of whiskey—but by the 1980s and 1990s a combination of inflation and candidate competition had driven the per-vote cost to about \$50.<sup>94</sup> Despite the substantial increase, various local Republican politicians and their absentee-ballot "brokers"—frontmen who give people cash in exchange for their marked and signed absentees—were more than willing to pay the price.<sup>95</sup>

"It's a way of life," commented former assistant state attorney general Dale Wright, who was assigned to the vote fraud hotline in his office. "It is basically conceded in Kentucky that people have a constitutional right to sell their vote. We laugh about there being three Kentucky cash crops: tobacco, marijuana, and votes."<sup>96</sup> Wright describes a particularly blatant form of vote-buying in some Kentucky precincts:

Sometimes the buying or selling [of votes] is done right at the door of the polling place. The [vote-buyers] are stationed at the end of the road leading to the [precinct], and trucks stop and the drivers are given a kind of business card. Then these [bought] voters go into the polls and the [partisan] election judges see the card, know exactly where it came from, and watch to see that the voter votes correctly . . . Then one of the judges will tear off a certain corner of the card. When the voter drives off, he stops to see the vote buyer at the end of the road, presents the torn card, and is paid.<sup>97</sup>

Moreover, in some parts of the state, says Wright, "The patriarch or the matriarch of a very large family may commit the whole damn

family to the highest bidder, and once [he or she's] been paid, [all family members] file for absentee ballots, sign them, and turn them over" to the party or candidate's agent. By the way, Wright knows whereof he speaks, and not just because he worked in law enforcement. "Hell, I was part of it. My first year out of law school, in 1971, I hauled half-pint whiskey bottles all [election] day around the polling places, and I took the money to the family patriarchs" at a time when he was active in partisan politics.

Kentucky and a few other places aside, Republicans have fewer opportunities for vote fraud available to them. In many states, particularly in the South and some border states, the GOP has rarely if ever controlled the local and legislative offices necessary to set the rules and manipulate the election process. Alabama and Texas clearly demonstrate this, although in those states and elsewhere in Dixie, Republicans are beginning to make the necessary gains at the ballot box that will change the balance of power in many localities.

In and out of the South, another factor is also at work: the hard reality of economic and class politics. In most areas, the Republican base consists primarily of white-collar, managerial professionals, as well as Christian conservatives. Neither group is easily induced to commit fraud; community standards, cultural values, "clean government" orientation, high education level, and/or the lack of a financial incentive to commit fraud for just a few dollars work against any Republican Party operative who seeks to draft them into any illegal schemes.

By contrast, the pool of people who appear to be available and more vulnerable to an invitation to participate in vote fraud tend to lean Democratic in their partisan predisposition, such as low-income minorities.<sup>98</sup> The usual turnout among African Americans and Hispanics is disproportionately low, and Democratic organizers are often desperate to boost their participation rate. Some liberal activists have even partly justified fraudulent endeavors on this basis; those making this case say it is unfair that the voices of the poor and dispossessed are muted at the ballot box, and therefore extraordinary measures (for example, stretching the absentee ballot or registration rules) are required to compensate.<sup>99</sup> To most observers, though, the rationalization that the end justifies the means is not very convincing. The 1993 passage of the "motor-voter" bill that dramatically eased voter registration

reduced whatever cogency such an argument possessed. (This bill, which also potentially increases the opportunities for vote fraud, is discussed in chapter 11.)

Less partisan readers might wonder more about the breadth of election fraud. Are polling problems restricted just to the four hot spots we investigated, or do they characterize the American electoral process generally and range more widely? Our strong suspicion—based on dozens of unexplored tips from political observers and interviewees—is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country. In New Jersey, for instance, nearly 1,000 illegal votes were cast in Hudson County (Jersey City) in a 1989 election, including some by people who were unregistered and others who were dead.<sup>100</sup> In addition, several dozen psychiatric patients—some of whom believed Franklin Roosevelt or Harry Truman was still president—managed to cast absentee ballots in a local 1993 election in Secaucus.<sup>101</sup> And, one of our interviewees, Republican political consultant Ed Rollins, claimed in a session with us that in the 1993 New Jersey gubernatorial election, there were precincts with 100 to 200 votes recorded for the Democratic candidate, Governor James Florio, before the polls opened. Rollins blamed "Democratic sheriffs in control of the machines."<sup>102</sup>

Granted, vote fraud has been a staple of New Jersey's history; as one chronicler wrote, "What Renaissance Italy was to art, the old-time Garden State was to vote fraud."<sup>103</sup> However, places with relatively spotless records, where the authorities are convinced that the electoral process is clean, may be especially vulnerable to fraud. Virginia is a perfect example. Though administratively well run, the elections process in the prideful Old Dominion may be too reliant on an outdated "honor system" and sense of civic security. One can cast a ballot in Virginia on Election Day without displaying any identification. All one must do is give a name and an address to a poll worker who then checks the official voter list—a procedure potentially wide open to fraudulent manipulation.

Whether fraud is Democratic or Republican, or located in the North or the South or the West, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections (mainly in very tight races), even one

fraudulent ballot is too many. The superstructure of any representative democracy ultimately rests on the soundness and integrity of the elections that produce its governors. Most important of all, citizens must have complete confidence that the declared winners are the actual winners; otherwise, the motivation to participate in elections is destroyed. Millions of citizens are already convinced that their one vote matters too little to exercise the franchise. Once the pattern of election fraud becomes too obvious for the media to ignore, and the public begins to suspect or believe elections can be stolen, then American democracy's currently tenuous hold on many individuals may well dissipate.

Therefore, the need for reform is urgent and clear. Voter turnout in the United States is traditionally too low, and cynicism among citizens too high, to permit the malodorous malady of election fraud to continue unchecked—or to spread. Fortunately, some simple procedural changes, combined with newly advanced technology, can make a real difference in this corrupt province, and proposals in both categories will be set forth in chapter 11.



## Notes

- In a letter to Gibson dated August 9, 1993, Secrest accused the reporter of "a pattern of very disturbing behavior . . . potentially including . . . receipt of stolen materials, . . . fraudulent means to acquire propriety [sic] trade materials, and . . . harass[ment of] employees in a dark parking lot as they left work." No action followed, and the facts of Gibson's reporting were never convincingly challenged or refuted.
43. The average population of registered voters per district was approximately 30,000, so as many as one of every twenty households containing a registered voter was being reached—a sizable proportion if one's goal was to spread rumors.
  44. Nine separate questions in the poll posed negative arguments about Orrock. The respondent was asked to state whether each argument was "a very persuasive reason not to reelect him," "an only somewhat persuasive reason," or "a not at all persuasive reason."
  45. Wisconsin Republicans have also been targeted in state legislative races. These push-polls were reportedly conducted by the National Education Association's Wisconsin affiliate. See Harwood and Pearl, "In Waning Campaign Hours." See also Judy Williams, "5th District Candidates Pull Plug on Phone Calls," *Appleton (Wisconsin) Post-Crescent*, October 9, 1994, p. B8; and Judy Williams, "Candidates at Odds Over Phone Tactics," *Post-Crescent*, October 29, 1994, p. B1.
  46. See Phil Porado, "A Case Study: How Negative Phoning Didn't Work in Two State House Races," *Campaigns and Elections* 13 (April 1992): 62; Buddy Nevins, "Many Undecided about Candidates in Upcoming Primary," *Fort Lauderdale Sun-Sentinel*, August 28, 1994, p. B4.
  47. Telephone interviews with Haley Barbour, February 26 and May 31, 1995.
  48. Barbour noted, "At one point, we considered a script saying, 'If the Democrats contact you, would you call [the following] 800 number.' But we ended up not doing that because it was kind of complicated."
  49. The information in this section is taken from Maloney's testimony before the Federal Election Commission on March 8, 1995.
  50. See Scott Lehigh, "Kennedy Camp Reacts Angrily to 'Push-poll,'" *Boston Globe*, November 5, 1994, p. B18.
  51. The calls also tied North to the Reverend Jerry Falwell and U.S. Senator Jesse Helms (Republican of North Carolina). See Laurie Kellman, "Robb callers tie North to David Duke," *Washington Times*, October 28, 1994, p. A14; Laurie Kellman, "North Says Recent Troubles Won't Keep Him out of the Senate," *Washington Times*, October 29, 1994, p. A1; and Margaret Edds, "Get-Out-the-Vote Efforts Crucial in Close Senate Race," *Virginian-Pilot*, October 30, 1994, p. A2.
  52. News Staff, "Bird Says Benson 'Survey' Is Just a Dirty Political Trick," *Rocky Mountain News*, July 23, 1994, p. A8.
  53. See Harwood and Pearl, "In Waning Campaign Hours."
  54. See R. H. Melton, "Poll Firm That Irked Voters Paid by Coleman," *Washington Post*, November 1, 1989, p. A1.
  55. Interview with Mark Sanford, January 24, 1995.
  56. Interview with Geoff Garin, April 13, 1995.
  57. Interview with Karan English, January 13, 1995.
  58. Telephone interview with Steve Horn Jr., campaign manager for his father, February 17, 1995. Horn Jr. suggests that the push-polling for his father's 1994 Democratic foe, Peter Mathews, was done by a prominent Democratic telephone bank firm, Gordon and Schwenkmeyer. Indeed, Mathews's filings with the Federal Election Commission show two late payments to the firm, \$10,000 on November 6, 1994, and an additional \$3,270 on November 13, 1994. Mike Gordon, president of the firm, declined to comment on the substance of the allegation, citing his firm's policy of "not discuss[ing] clients with anyone." Telephone interview with the authors, July 20, 1995.
  59. Telephone interview with Tim Tomkins, February 2, 1995.
  60. Interview with Steve Chabot, November 30, 1994.
  61. Interview with Herb Klein, January 17, 1995.
  62. Interview with Mike Synar, January 27, 1995. Also interview with Amy Tobe, Synar's campaign manager, March 6, 1995. According to our interviewees, computer-automated calls are often made when the message is brief and no response from the listener is required. The technology exists for computer-automated phoning that includes listener response, but it can be clumsy or off-putting to those at home.
  63. See Mike Oliver and Michael Griffin, "Plot Thickens as Politicians Resort to Pulling Dirty Tricks," *Orlando Sentinel Tribune*, October 11, 1992, p. B1.

## CHAPTER 10. VOTE FRAUD

1. In the 1994 general elections there were several well-publicized close contests in which vote fraud was alleged, including the Maryland gubernatorial race, won by Democrat Parris Glendening over Republican Ellen Sauerbrey by 5,993 votes out of more than 1.4 million cast; a North Carolina U.S. House contest in District 7 won by incumbent Democrat Charles G. Rose over Republican Robert Anderson by 3,821 votes out of 121,519 cast; and a California U.S. House race in District 36 between incumbent Democrat Jane Harman and GOP challenger Susan Brooks, which Harman won by only 812 votes of 195,808 cast. In this chapter, however, we have chosen to focus on less well-known examples that are indicative of systemic corruption.
2. Bruce L. Felkner, *Political Mischief: Smear, Sabotage, and Reform in U.S. Elections* (New York: Praeger, 1992), p. 160; see also pp. 155–82.

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3. For a classic treatment, see Paul Leland Hayworth, *The Hayes-Tilden Disputed Election of 1876* (Cleveland: Burrows Brothers, 1906).
4. Louise Overacker, *Money in Elections* (New York: Macmillan, 1932), p. 31.
5. Many "floaters"—individuals who would roam from precinct to precinct, casting a ballot at each one—were imported from other cities and towns to perform this extraordinary civic "duty." The practice may be the origin of the old aphorism, "Vote early and often."
6. J. J. McCook, "Venal Voting: Methods and Remedies," *Forum* 14 (September/October 1892): pp. 1, 159; as cited in Overacker, *Money in Elections*, p. 32.
7. A. Z. Blair, "Seventeen Hundred Rural Vote-Sellers," *McClure's* 38 (November 1911): 33; as cited in Overacker, *Money in Elections*, p. 33.
8. For further details on the 1960 election, see Theodore C. Sorensen, *Kennedy* (New York: Harper and Row, 1965), chap. 8, pp. 211–23; Stephen E. Ambrose, *Nixon* (New York: Simon & Schuster, 1987), chap. 26, pp. 584–608; and Theodore White, *The Making of the President 1960* (New York: Pocket Books, 1961).
9. As Johnson underling L. E. Jones later reported, LBJ had an early introduction to the (under) world of voter fraud. Working for the left-leaning Maury Maverick in his winning 1934 congressional campaign, Johnson sat at a table covered with money and paid barely bilingual Mexican-Americans in multiples of \$5 bills. Jones realized that Johnson was paying each man \$5 for each eligible voter in his family. See Robert A. Caro, *The Years of Lyndon Johnson: The Path to Power* (New York: Alfred A. Knopf, 1982), pp. 276–77. Johnson put this experience to good personal use in 1937, campaigning in his successful bid to fill Texas's Tenth Congressional District seat, which had been vacated by the death of James P. Buchanan. Caro reports that Johnson bought votes in African-American and Czech communities.
10. Parr ordered Salas to come up with the needed votes in a meeting attended by Johnson himself, according to Salas. Decades later, Salas admitted that two deputy sheriffs added the extra names to the voter list, at his direction. Most observers at the time strongly suspected this skulduggery, but efforts in the Democratic state committee and in the courts to change the results failed. See James W. Mangan, Associated Press interview, July 30, 1977. For a more extensive account of Johnson's Box 13 shenanigans, see Caro, *The Years of Lyndon Johnson*, chaps. 14 and 15, pp. 318–412.
11. The hundreds of previous signatures were written in different color inks, and were clearly signed by each individual voter separately.
12. The first draft of the Philadelphia section was researched and written by University of Virginia graduate student Charles H. Woodcock.

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13. See "Stinson Cleared of Election Fraud," *United Press International* regional news, June 22, 1994. There was insufficient evidence to tie Stinson directly to the fraudulent efforts made on his behalf. The Democrat had been specifically charged with unsealing and counting absentee ballots, as well as unlocking voting machines in his own precinct. For a description of the pretrial proceedings, see Marc Duvoisin, Daniel Rubin, and Henry Goldman, "Stinson, 2 Aides Are Indicted; Charges Center on Absentee Ballots," *Philadelphia Inquirer*, March 13, 1994, p. A1.
14. Newcomer's final opinion in the *Marks v. Stinson* case (1994 U.S. Dist. LEXIS 5273; hereafter, *Marks v. Stinson*) was actually the second time he ordered Stinson stripped of the seat and certified Marks. The proceedings occurring prior to his April 26, 1994, decision are complicated, and an accounting of the entire obstacle course Marks was forced to run in order to gain redress would require a chapter in itself.

Marks's appeal through the state court system proved futile. The Marks campaign was actually aware that absentee malfeasance had occurred prior to election night. Even so, Steve MacNett, a Pennsylvania lawyer who worked on Marks's appeal, explained that at each of several stages of the appeal process, "the apparent over-politicization of the Pennsylvania Courts, especially in Philadelphia," prevented successful action. MacNett continued, "[The] three judges he was before in Philadelphia, each of them has deep ties to the Democratic party establishment" (interview with Steve MacNett, July 18, 1995).

Marks's inability to gain redress quickly was compounded by the actions of the County Board of Elections, which prompted Judge Clarence Newcomer to note that "the actions of the board [of Elections] were designed to, and did in fact, prevent any realistic opportunity to appeal the certification in the State court system. . . . Defendants allege plaintiffs consistently failed to avail themselves of the proper appeal procedures. Plaintiffs were never given the opportunity to present their claims because the safeguards failed at every level" (1994 U.S. Dist. LEXIS 5273, 58).

With his appeal to the State Supreme Court pending, Marks filed for redress in federal court. Judge Newcomer found his claims compelling, and on February 18, 1994, delivered his initial injunction stripping Stinson of the seat, threw out all absentee ballots, and ordered the Board of Elections to certify the victor of the machine vote, that is, Marks. While federal judges have in the past overturned the results of state elections on civil and voting rights grounds, this was the first occasion a federal judge simply installed the opposing candidate in office rather than ordering a new election.

However, Newcomer was found to have exceeded his authority by the court of appeals. (See his original opinion, *Marks v. Stinson*, 1994 U.S. Dist.

LEXIS 1586, order overturned.) The Third Circuit Court of Appeals upheld the portion of Newcomer's order stripping Stinson of the seat, but vacated his order to install Marks. While the Circuit Court agreed the District Court was correct to claim jurisdiction, proof of voter fraud was not sufficient to award the seat. Writing for the court, Judge Stapleton, stated, "The district court should not direct the certification of a candidate, unless it finds, on the basis of record evidence, that the designated candidate would have won the election but for wrongdoing" (19 F.3d 873, 889 [3d Cir. 1994]). The appellate judges relied on *Griffin v. Burns* (570 F.3d 1065 [1st Cir. 1978]) to suggest that Newcomer's order to install Marks might be unconstitutional, creating an opportunity for voters to challenge the decision under the Federal Voting Rights Act. Because Newcomer's order voided *all* absentee ballots cast, it inevitably voided some that were lawfully and properly cast. The First Circuit in *Griffin* "concluded that rejection of a ballot where the voter has been effectively deprived of the ability to cast a legal vote implicated federal due process concerns" and possible Fourteenth Amendment violations (*Marks v. Stinson*, 19 F.3d at 889).

The second opinion, which we discuss in the text, was the result of the circuit court's remand to Newcomer. See particularly Newcomer's analysis of the number of illegal absentee ballots and the statistical tests used to corroborate his findings. Newcomer went to great pains to show that the Stinson campaign's "dollar a ballot" drive produced approximately 600 fraudulent votes (greater than the 461 needed to change the election results). He also found via expert testimony that Stinson received approximately 1,000 more absentee votes than expected.

The story does not end here, however. Stinson unsuccessfully appealed Newcomer's second opinion to the Third Circuit in August 1994, and then in January 1995, to the U.S. Supreme Court, which declined to overturn or comment upon the judgment. In the (presumably) final chapter of the story, Marks ironically lost his hard-won seat in the regular 1994 general election to Nina Tartaglione, the daughter of Democratic County Commissioner Margaret Tartaglione, who had been implicated in the scandal that denied Marks the seat to begin with. (See "Recount Shows Marks Still a Loser," United Press International regional news, November 14, 1994.)

15. See, for example, *Griffin v. Burns* (570 F.2d. 1065, 1st Cir. 1978), the case cited by the Third Circuit panel to justify remanding the case to the district court. In this case, Providence election officials distributed absentee ballots for a primary city council contest, although Rhode Island law only provides for absentee voting in general elections. The Rhode Island Supreme Court found the statutory omission precluded the use of absen-

tees in primary elections, decertified the primary victor, and ordered recertification based only on machine votes—which also changed the outcome of the election. However, the circuit court agreed with absentee voters' claims that the lower court ruling effectively disenfranchised them, vacated the order to certify on the basis of the machine count, and ordered a special election. Note, however, that the *Burns* case did not involve fraud per se, and the Third Circuit left Newcomer the option to certify Marks if he found the Republican would have been elected but for the wrongdoing.

16. See "Improper Ballots Turned Election," *Philadelphia Inquirer*, March 25, 1995, p. A1. The *Inquirer's* investigation, which required a massive effort, indicated that at least 540 absentee ballots cast for Stinson were tainted, a number that exceeded his margin of victory.
17. PA Stat. Tit. 25, 3146.1–3146.6 (1994).
18. Interview with Bruce Marks, July 18, 1995. In addition, several hundred rejected applications (some of which were for unregistered individuals, and some of which were simply fraudulent) were covertly returned to the Stinson campaign to prevent their discovery. These documents are public records, and should have been preserved for two years.
19. *Marks v. Stinson*, 1994 U.S. Dist. LEXIS 5273 p. 23.
20. *Ibid.*, p. 26. As noted above, Stinson had narrowly lost an election for a Philadelphia city council seat in a June 1991 Democratic primary. For a fuller account of Jones's recollections of his work for Stinson, see also Henry Goldman and Sergio Bustos, "Campaign Worker Says Stinson Ignored Warning on Ballots," *Philadelphia Inquirer*, February 8, 1994, p. A1. Stinson, on the other hand, challenged Jones's credibility and claimed that he deliberately maintained his ignorance of many details of his campaign, including the absentee ballot program. See Mark Fazlollah, "Stinson Said He Stayed Clear of Details," *Philadelphia Inquirer*, February 8, 1994, p. A1. Stinson's argument, however, contradicts the testimony of many of those who worked on his campaign; see Marc Duvoisin, "Absentee-ballot Quest Described as Obsessive; Aides Say Stinson Discussed It Frequently," *Philadelphia Inquirer*, March 13, 1994, p. A1.
- Ironically, Marks later recalled that Daniel McElhatton, Stinson's opponent in the 1991 city council primary, was one of the sources who suggested he investigate Stinson's use of absentee ballots: "I ran into [Daniel McElhatton] who had run against my opponent in a 1990 primary, . . . and he just recommended to me that I look into the absentee ballots" (interview with Bruce Marks, July 18, 1995).
21. *Marks v. Stinson*, p. 23.
22. *Ibid.* See also *Marks v. Stinson*, p. 31, where Judge Newcomer notes the scheme; Hispanic and black voters were also told "that the law had been

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- changed and there was a 'new way to vote' from the convenience of one's home."
23. For a more complete account, see "Voters Say Ballots Were Forged," *Philadelphia Inquirer*, November 21, 1993, p. A1; and John F. Dickerson, "Is This Seat Stolen? Angry Republicans Contend That Dirty Tricks at the Polls Tipped the Balance of Power in Pennsylvania," *Time*, February 7, 1994, p. 34.
  24. *Mark's v. Stinson*, p. 36.
  25. *Ibid.*, p. 39.
  26. One of the Democratic commissioners even gave an order to "stay out of it" to an elections board employee who ascertained that unregistered citizens had applied for absentee ballots and so informed the commissioner.
  27. *Mark's v. Stinson*, p. 55.
  28. Interview with Jack Connors, July 18, 1995.
  29. *Mark's v. Stinson*, p. 47.
  30. Office of Alabama Secretary of State, Elections Division. As was the case with the Philadelphia story, where party control of the Pennsylvania state senate was at stake, the significance of the Alabama election was tied to a larger issue current in the state at the time. Tort reform, which gained national prominence in the Republican Party's "Contract with America," is an especially significant issue in Alabama, as in many states where judges are elected. Plaintiff trial lawyers categorically oppose regulatory efforts to limit jury awards for punitive damages and pain and suffering in civil liability suits. Alabama is distinguished by the large dollar amounts that juries award to plaintiffs, and by the fact that the state appeals courts, including the Supreme Court, often maintain the amounts set by juries. Hornsby is the past president of the Alabama Trial Lawyers Association and is critical of tort reform. Hooper and the Alabama Business Council are outspoken proponents of reforming tort award limits. The Hornsby-Hooper race is therefore symbolic of the wider issue.
  31. The United States Court of Appeals for the 11th Circuit requested that the state Supreme Court clarify the status of the 1,700 absentee ballots under Alabama electoral law prior to ruling on the merits of Hooper's supporters' claims. A five-judge panel of the state Supreme Court (not including Hornsby), all Democrats, ruled on March 15, 1995, that by Alabama Code 17-10-7, the ballots were in substantial compliance with Alabama electoral law and should be counted despite the fact that the affidavits attached to the ballots were not notarized or witnessed by two individuals, as required. This ruling would place their colleague Hornsby back on the bench. The circuit court is currently considering the panel's opinion, and as Hooper noted, "This isn't even close to being over." (See

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- Ronald Smothers, "Court Orders Votes Counted in Alabama," *New York Times*, March 16, 1995, p. A23.) However, in September 1995 a U.S. district court judge in Mobile threw out the disputed absentee ballots, and the U.S. Court of Appeals then upheld the judge's decision, thereby clearing the way for Hooper's swearing-in, at long last. (See "Chief Justice Takes Office in Alabama," *New York Times*, October 22, 1995, p. A25.)
32. Affidavit of Paul J. Harrington, November 20, 1994. All affidavits cited in this section are public record, and were submitted as documentation for *Larry Roe et al. v. Mobile County Appointing Board et al.* (Civil Action 94-885-AH-S).
  33. Affidavit of Paul J. Harrington, November 20, 1994.
  34. Affidavit of Pam Montgomery, November 11, 1994.
  35. Affidavit of H. O. Kirksey, November 21, 1994.
  36. Affidavit of Anthony J. Keith, November 14, 1994. See also affidavit of Juanita Crawford, November 1994.
  37. Affidavit of Jacquelyn Gandy, November 22, 1994.
  38. Testimony of Helen Watts, from transcript of Civil Action 94-885-AH-S, *Larry Roe et al. v. Mobile County Appointing Board et al.* (preliminary injunction hearing before Judge Alex Howard [U.S. District Court, Southern District of Alabama]), pp. 122-28.
  39. *Ibid.*
  40. Affidavit of John Russell Campbell, November 15, 1995.
  41. *Ibid.* See also affidavit of John Modris Grods, November 14, 1994.
  42. Testimonies of William Moulton and Murphy Gewin, from transcript of Civil Action 94-885-AH-S, *Larry Roe et al. v. Mobile County Appointing Board, et al.* (request for temporary restraining order before Judge Alex Howard [U.S. District Court, Southern District of Alabama]), pp. 48-63 and 109-11.
  43. Affidavit of John Russell Campbell, November 15, 1994.
  44. Telephone interview with Dan Warren, July 20, 1995. Warren is a member of the Board of Registrars.
  45. Telephone interview with attorney Albert Jordan (of Wallace, Jordan, Ratliff, Byers, & Brandt), March 27, 1995.
  46. See Doug Haaland and Doug Swordstrom, "A Report on Election Law Irregularities: California 16th Senate District," personally published report, January 27, 1995, p. 8.
  47. See "Report of the Fair Elections Foundation (II)" (Costa Mesa, Calif.: self-published, winter 1995), pp. 34-48.
  48. See "Report of the 1995 Elections Summit" (Sacramento, Calif.: Office of the California Secretary of State, April 18, 1995), pp. 11-14. Karen Saranita, of the nonpartisan watchdog group Fair Elections Foundation, estimated that the deadwood clogging the registration rolls was in the

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- range of 14–17 percent, while Trudy Shaffer, of the California League of Women Voters, cited an estimate of 24 percent from a study conducted in the 1980s.
49. Secretary of State Jones estimated “deadwood” costs for the state of California at between \$3 and \$5 million. Similarly, Associated Press reporter Doug Willis estimated that registration inaccuracies cost the state government \$5 million and local governments an additional \$3 million. See “Report of the 1995 Elections Summit,” p. 14; and Doug Willis, “Deadwood on Voter Registration Rolls Wastes Millions for Taxpayers,” AP News Analysis, May 1, 1995.
  50. The lists have apparently been lost in the shuffle of bureaucracy, and the names of dead voters who passed away in the early 1980s are still on the rolls in good standing. This problem was discussed at length at the Election Summit. (See the “Report of the 1995 Elections Summit,” p. 13.)
  51. Ventura County elections head Bruce Bradley, as quoted in the *Los Angeles Times*, October 28, 1994, p. B1.
  52. See “Report of the 1995 Elections Summit,” p. 16.
  53. *Ibid.*
  54. See “Report of the Fair Elections Foundation (I),” p. 4. The Los Angeles County registrar’s office disputes this figure. In an interview with the authors on July 20, 1995, Wendell Patterson, manager of the records division, said there is “no positive proof” that 4,000 people illegally registered to vote, and he stressed that under California law, when a person signs the affidavit on the registration card, the registrar cannot challenge its authenticity or any information on the card. Of course, this provision of the law in itself may be a problem.
  55. Robert B. Gunnison, “Registrars Seek Voting Reform,” *San Francisco Chronicle*, February 23, 1995, p. A16.
  56. See Haaland and Swordstrom, “A Report on Election Law Irregularities,” p. 9.
  57. See “Report of the Fair Elections Foundation (I),” p. 61.
  58. Haaland and Swordstrom, “A Report on Election Law Irregularities,” pp. 7, 9. In a letter to us dated July 13, 1995, Norma Logan, assistant registrar in Fresno County, wrote that while she has “no direct knowledge or proof that illegal aliens are voting,” there are “many allegations about it, and the possibility is that some may be voting.”
  59. See “Report of the Fair Elections Foundation (I),” p. 62. The man in question is Eduardo Rivera, who publishes *Nuestra Gente*.
  60. See Shawn Hubler, “County Ordered to Tighten Rules for Voter Registration,” *Los Angeles Times*, March 30, 1994, p. B3. He registered in September 1990, when he was nineteen years old, and re-registered in 1993, changing his address and his party affiliation from American Independ-

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- dent to Democrat. There is no record of Martinez actually casting a ballot. His intention may have been to gain documentation in order to qualify for welfare benefits, as Congressman Steve Horn pointed out. (See *Congressional Record*, April 20, 1994.) Or like other illegals, he could have been seeking a voter registration card in order to obtain a separate border-crossing card that facilitates transit across the border and qualifies the holder for a California driver’s license. (A notarized voter card can be used to secure the border document—see the “Report of the Fair Elections Foundation [I],” p. 4.)
- Ironically, Luis Donald Colosio, the man Aburto assassinated, had pledged to depart from the fraudulent electoral practices that have severely damaged the credibility of the Institutional Revolutionary Party (PRI), including massive, systemic voter fraud. To his credit, as president of the PRI, Colosio conceded his party’s loss to the right wing National Action Party (PAN) candidate in the gubernatorial race in Baja California Norte, the first such defeat in 60 years. (See Larry Rother, “Mexico’s Ruling Party Concedes First Defeat in a Governor’s Race,” *New York Times*, July 6, 1989, p. A1.) However, Colosio was also the campaign manager of former President Carlos Salinas’s 1988 presidential campaign, the conclusion of which was marred by widespread evidence that the PRI stole the election from Salinas’s opponent, Cuauhtemoc Cardenas. See David Gardner, “Mexico’s New Man Bows to the Past; Mexican Elections,” *Financial Times*, May 22, 1988, p. 4.
61. See Lanie Jones, “Veteran GOP Director Leads Charge in Voter Registration Campaign,” *Los Angeles Times*, October 5, 1986, pt. 2, p. 1.
  62. See Matthew Mosk, “Two Accused of Voter Registration Fraud,” *Los Angeles Times*, October 28, 1994, p. B1. This case is also mentioned later in the chapter. In another example of registration excess, twenty-six transient residents of a Salvation Army shelter were registered and requested absentee ballots, but left before the election. See Robert B. Gunnison and Susan Yoachum, “Abuses Cast Doubt on State Voting System,” *San Francisco Chronicle*, February 22, 1995, p. A1; and Robert B. Gunnison, “Registrars Call for State Voting Reform,” *San Francisco Chronicle*, March 27, 1995, p. A15.
  63. Under California election law, a “helper’s punching holes in other people’s absentee ballots, his or her instructing voters in their choice of candidates, or handing out free stamps are misdemeanors, and his or her handling or mailing of another individual’s absentee ballot is a felony offense.” Now a sophisticated process, absentee “farming” skirts the law, and in some cases violates it.
  64. See Gunnison and Yoachum, “Abuses Cast Doubt on State Voting System,” p. A1.

65. Ibid.
66. Ibid. According to the article, although it is illegal for a candidate to electioneer "while in the residence or in the immediate presence of the voter, and during the time he or she knows the absentee voter is voting," candidates have admitted on the record to engaging voters completing absentee ballots. As explained by Fresno City Council candidate Dan Ronquillo, "there was nothing wrong with entering voters' homes and answering their questions while they voted." (Quoted in Ibid.) However, evidence existed that Ronquillo did more than answer questions; as Gunnison and Yoachum found, "Some voters said in interviews that they felt pressured by Ronquillo. 'He wanted to help me fill out my ballot,' said one elderly voter. 'You know, that's as private as my purse.'"
- Ronquillo's actions certainly had precedents in Fresno. City councilman Homero Espinoza, elected in 1992, was found guilty of voter fraud in 1995. Among other offenses during his campaign, Espinoza personally took and cast other people's absentee ballots, in some cases having the unmarked ballots mailed to his own post office box. Espinoza won by just thirty-four votes in an election where an extraordinarily high 35 percent of the ballots were cast by absentee voters. (Probation report of Homero Espinoza, Fresno County Superior Court Case No. 503088-7, released to us by letter on May 30, 1995, by County Counsel Phillip S. Cronin.)
67. Letter to the authors from Bradley J. Clark, Registrar, County of Alameda, dated July 31, 1995. Mr. Clark pointed out two loopholes in the California process for removing the deceased from the voting rolls: "Alameda County residents who die outside the county have their death records reported in the county of death. These records are then forwarded to the state registrar of vital statistics who in turn sends reports back to the county of residence. There can be a lag of six months to a year to receive this information. Alameda county residents who die outside the state have their death recorded in the state of death. Due to confidentiality laws in many states, these records are never provided to us."
68. See "Report of the Fair Elections Foundation (II)," p. 15. This San Francisco man somehow awoke from a severe case of methadone poisoning, which left him in rigor mortis on April 1, 1982. But he stiffly registered as a Democrat on September 29, 1991, and cast his ballot via coffin in the 1994 general election.
69. Haaland and Swordstrom, "A Report on Election Law Irregularities," p. 6.
70. Ibid., p. 10. The legitimate voter was interviewed and signed an affidavit for the report's authors.
71. See "Report of the Fair Elections Foundation (II)," p. 51.
72. Ibid., p. 24.
73. This "law" is applied to the world of campaign finance in Larry J. Sabato,

- Paying for Elections: The Campaign Finance Thicket* (New York: Priority Press, 1989), pp. 19-24.
74. Texas election law permits "election officers, watchers, or any other person lawfully in the polling place" to challenge any voter's eligibility, including absence from registration rolls. Following the challenge, the voter is given the opportunity to rebut the reasons given by executing an "affidavit that states the facts necessary to support the voter's eligibility to vote." If such an affidavit is produced, the voter may proceed to vote and his or her ballot is not separated from those of unchallenged voters. If the voter refuses to execute the affidavit, he or she is simply not permitted to vote. See Tex. Elec. Code Ann. 63.010 (West, 1994).
75. See Alan Bernstein, "Thousands Voted in 1992 Sans Registration," *Houston Chronicle*, October 24, 1994, p. A1. The total voter turnout in Harris County (including the 6,707 ineligible persons) in November of 1992 was 958,234.
76. Note that 5,277 registrations had expired, and 143 were living in another county.
77. As Alan Bernstein of the *Houston Chronicle* explained it to us in a telephone interview on April 20, 1995, "The registrar's office took [the 6,707 illegal cases in Harris County] en masse to the district attorney's office, who took them to a grand jury, and the grand jury said, 'To hell with that, we have got [serious crimes] going on to worry about.'"
78. See Selwyn Crawford, "Vote Fraud Allegations are Probed; Registration of 3,000 in Tarrant Doubted," *Dallas Morning News*, May 27, 1993, p. A33.
79. Early voting is available to all voters twenty days before Election Day, although most voters must appear at a designated polling site in person. Exceptions are made for certain individuals and groups, such as the elderly; this is explained in the text following. In 1992, over 40 percent of the registered voters cast an early ballot in some of Texas's most populous counties. See Edwina Rogers, "Election Daze: Is Early Voting Coming to a State Near You?" *Campaigns and Elections* 15 (September, 1994): 36-37.
80. The signature of a witness is required on the mail-in-ballot application and the certification on the carrier envelope only if another signs for the voter, perhaps if he or she is illiterate or otherwise incapacitated. See Tex. Elec. Code Ann. § 87.041.(b)(2) (West, 1994).
81. See Kevin Moran and Bob Sablatura, "Mail-in Fraud Allegations Probed," *Houston Chronicle*, October 5, 1994, p. A1.
82. Press release, Office of the Criminal District Attorney, Galveston County, Texas, December 20, 1994, pp. 1-3.
83. For example, the campaign of U.S. Representative Craig Washington of Houston made five separate payments in February and March 1994 total-

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- ing \$22,505 to the "Acres Home Community Relations" group for an "early voting drive" (Federal Election Commission). This group has been suspected of orchestrating some of the mail-in abuses involving early voters, according to reporter Alan Bernstein of the *Houston Chronicle*, but "nobody has ever proved anything on them." (Telephone interview with Alan Bernstein, April 20, 1995.)
84. Affidavit of Edward Taylor, subscribed December 7, 1993, by R. M. Simmons, Harris County, Texas.
  85. According to Texas elections law, it is a misdemeanor to "prepare the voter's ballot in a way other than the voter directs," or "suggest by word, sign, or gesture how the voter should vote." (See Tex. Elec. Code Ann. § 64.036, [a][2-3] [West, 1994].) These stipulations apply to both the polling place and early voting by mail.
  86. Affidavits of Maria Gloria Casteneda, subscribed by Debra Ann Garza, October 27, 1992, and Jesus Casteneda, subscribed by Debra Ann Garza, October 28, 1992. Mr. and Mrs. Casteneda, who intended to vote for David Pena, were told by "helper" Federico Pilon that marking the ballot in the straight Democratic ticket oval would cast their vote for Mr. Pena. Pena was an independent candidate.
  87. Affidavit of Jesus Casteneda, subscribed by Debra Ann Garza, October 28, 1992.
  88. Affidavit of Celia Seymour, subscribed by Henry Rodriguez, December 3, 1994. Ms. Seymour interviewed Mr. Charles Scott and his son and discovered that Mr. Scott and his wife did not prepare the ballots, nor did they sign the carrier envelopes as required. Mr. Scott had signed his mail in application, and his wife placed her "mark" on the signature line, which would have been appropriate only if she were visually disabled or if a language barrier existed. The interloper, a neighbor, requested the Scotts' absentee ballots and indicated which candidate should be selected. Once the ballots were sealed in the carrier envelopes, the "helper" signed Mr. Scott's name on the envelope certification and requested that the Scotts' son sign for Mrs. Scott. The discrepancy in signatures *should* have rendered the ballots invalid.
  89. Affidavit of Curley Cheney, subscribed by Catherine A. Platz, December 17, 1994; interview with A. Glenn Diddel, April 24, 1995; the death certificate of James Cheney Jr., dated September 17, 1992; and the falsified applications for mail-in ballots for both Curley and James Chaney Jr., dated November 23, 1993, and February 17, 1994. Although the spellings of the names differ by one letter, the applications were matched to the Cheneys by address.
  90. In the past two years, sheriffs in two South Texas counties have been implicated, and other counties' officials are undergoing investigation.

## Notes

- Brigido Marmolejo, sheriff of Hidalgo County for twenty years, was prosecuted and convicted for accepting bribes from a drug dealer. (See James Pinkerton, "Bribes Cost Sheriff His Job, Respect," *Houston Chronicle*, November 13, 1994, p. 1.) In Zapata County, Judge Jose Luis Guevera, Sheriff Romeo Ramirez, and County Clerk Arnaldo Flores were either convicted of or pleaded guilty to drug related charges. Interestingly, Judge Guevera's opponent alleged vote fraud in a primary election, the results of which were overturned by a state judge. See David McLemore, "Fallout from Drug Sting Has County in Quandary; Zapata Officials Going to Prison, Who'll Lead?" *Dallas Morning News*, July 3, 1994, p. A1; also, James Pinkerton, "Trafficking and the Long Arm of the Law," *Houston Chronicle*, July 31, 1994, p. 1.
91. See David McLemore, "Start County Denies Election Irregularities," *Dallas Morning News*, August 21, 1994, p. A47. Also, telephone interviews with David McLemore, April 18, 1995; Bruce Sherbert, Dallas County election administrator, April 20, 1995; and David Pena, April 20, 1995. Pena was an unsuccessful candidate for city clerk in Start County. These kinds of fraudulent activities, it should be noted, are not limited to South Texas in the Lone Star state. See Sylvia Martinez and Frank Trejo, "Hopefuls, Backers Accused of Fraud, Document Tampering in Two Districts," *Dallas Morning News*, May 5, 1995, p. A30; and Todd J. Gillman, "Dallas JP Loser Alleges Voting Fraud," *Dallas Morning News*, May 17, 1994, p. A21. Also see the affidavit of Victor Cantu, August 25, 1992, regarding favoritism in the mailing of absentee ballots.
  92. Affidavits of Mary Ramirez, November 12, 1992; and of Sonia Garza, November 15, 1992.
  93. Political scientist Louise Overacker, in her *Money in Elections* p. 34, explained the Kentucky operation this way: "The Republican organization in Louisville, Kentucky, has worked out a novel method of payment [for votes]. In the local election of 1925 aluminum discs the size of a half dollar bearing the imprint of a bulldog were distributed to the faithful by precinct workers. These bulldog checks were then taken to a district paymaster and redeemed for \$2.00. By this plan the use of money around polling places was avoided and only a few persons were entrusted with cash."
  94. These estimates were given by veteran Kentucky journalist Al Cross of the *Courier-Journal* in an interview with the authors, June 29, 1995. Another prosecutorial source told us the usual price was "more like \$20 . . . but the highest that I heard was \$150. . . . It depends on the market and how tight the race is."
  95. The absentee ballots were either sent directly to the voters, who marked them in the presence of the broker, or were sent to the broker, who then

simply had the voter sign pre-marked ballots. Once the voters signed off, they would receive the payoff.

The Kentucky legislature had attempted to curb vote fraud by passing reform legislation in 1988 that made purchasing or selling votes a felony offense. (Rigging election machinery and electioneering within 500 feet of the polls were also severely punished.) (See Kentucky Revised Statutes, Title X, at 117.235.) The new law apparently did indeed stem fraud at the polling places, where illicit activity is easily observable, but it may simply have channeled more fraud into the relatively hidden absentee process. As a result of the recent disclosures of absentee fraud, the legislature has passed still more reforms, including two mandates directly affecting absentee voting. Now, no individual is permitted to assist more than two voters, and citizens are allowed to vote by mailed absentee ballot only if they are certifiably disabled, or living outside their county, or serving in the military. (Kentucky Revised Statutes, Title X, at 117.075.) Other people who wish to vote prior to the election day must do so *in person* at their county courthouse. (Kentucky Revised Statutes, Title X, at 117.077.)

Unlike some of the other states we have investigated, Kentucky has taken vote fraud seriously. As George Russell, executive director of the State Board of Elections commented, "I think you'll find that the Attorney General, Secretary of State, and the General Assembly are completely committed to eliminate vote fraud. Of course, that's the *present* Attorney General, Secretary of State, and General Assembly" (interview with George Russell, July 27, 1995). The state election system is well administered; statewide registration records are computerized, and voters are identified by a unique number to prevent duplicate registration. Sources differed on whether the revisions of the election code, or a more active, aggressive approach to combating electoral abuses on the part of the State Board of Elections, secretary of state, and the state attorney general have contributed to a decrease in election fraud. In any case, there was a significant decrease in the number of calls made to the attorney general's statewide vote fraud hotline in 1994 and 1995. See, for example, John Voskuhl, "Primary '95: State's Vote-Fraud Hot Line Rings Only Three Times," *Courier-Journal*, May 24, 1995, p. B5.

96. Interview with Dale Wright, July 19, 1995.
97. *Ibid.*
98. The same class and economic distinctions can explain the presence or absence of "street money" in any community.
99. A couple of our Democratic interviewees alluded to this reasoning in off-the-record comments.
100. United Press International, "Election Officials: Four Dead People Cast Ballots in Hudson," January 12, 1989.
101. Peter J. Sampson, "Judge's Ruling Leaves Secaucus Mayorless: Chal-

lenge to Just's Victory to Proceed," *Bergen Record*, January 22, 1994, p. A4.

102. Interview with Ed Rollins, May 26, 1995.
103. The author of the observation is journalist Marc Mappen. See the retelling of a classic 1889 ballot-box stuffing in Hudson County in Marc Mappen, "Jersey-ana," *New York Times*, November 13, 1994, section 13, p. 17.

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For a fuller account, see Bob Woodward and Carl Bernstein, *The Final Days* (New York: Simon and Schuster, 1976), p. 89; and Mercer Cross and Elder Witt (eds.), *Watergate: Chronology of a Crisis* (Washington, D.C.: Congressional Quarterly, 1975), pp. 151–53.



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moderate measures such as the ones we suggest are not possible or successful, the more drastic remedies may have to be tried in some form.<sup>18</sup>

Legal niceties are not likely to temper all boiler-room telephone operations, so it would be helpful if each major state and local news organization established and publicized a toll-free "campaign corruption hotline" telephone number for citizens to use during the final month of election campaigns. It is far easier to piece together the story of corrupt practices while the phones are still warm than after Election Day, when the boiler-rooms have been dismantled. As we will discuss shortly, these hotlines can do double-duty, allowing citizens to report their suspicions of voter fraud as well.

**Vote Fraud**

Philadelphia, Alabama, California, and Texas make it obvious that the solutions required for voter fraud must necessarily be adapted to each locality's culture and practice. But one imperative unites all the cases: while registration and voting should be as easy as possible, the process ought also to be as fraud-proof as possible.

With the enactment of the federal "motor-voter" law in May 1993, ease of registration was guaranteed.<sup>19</sup> The major provisions of the legislation required states to permit people to register when applying for a driver's license or using other governmental offices that provide public assistance.<sup>20</sup> Few would argue with the intent of this aggressive approach to increasing America's abysmally low levels of registration and voter turnout.

However, some aspects of the motor-voter law also augment the potential for fraud. Registration by mail is mandated for every state; thus, the safeguards that can be present during in-person registration (such as the showing of picture identification cards) are removed. Workers at governmental offices are forbidden from challenging any registrant, even if they have good reason to suspect an individual is ineligible to vote. Under the motor-voter law, it has become more difficult to keep the voting rolls clean of "deadwood" voters who have moved or died, making fraudulent voting easier and therefore more tempting for those so inclined.<sup>21</sup> A "fail-safe"

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provision in the law also permits voters who have moved within the same county and congressional district to vote at either their old or new address—potentially inviting “extra-diligent” citizens (or their unknown substitutes) to cast a ballot at both locations.<sup>22</sup>

Motor-voter is not the only new wrinkle in the election process that could complicate the system’s integrity. In its December 1995 party primaries and January 1996 special election for the U.S. Senate held to fill the unexpired term of the disgraced Robert Packwood, Oregon became the first state to hold a congressional contest entirely by mail. Ballots were mailed to registered voters about three weeks before both the primaries and general election, with citizens able to return them by mail or drop them off at designated sites in each locality up until the technical “election day.” Officials went to considerable lengths to prevent fraud, including checking every single ballot signature against the registration card original. A progressive state with a history of clean elections, Oregon was not a likely site for voting irregularities in any event. But it is easy to imagine the potential for electoral mischief in states with less squeaky-clean traditions or careful procedures. Mail-in-balloting—which by definition includes everyone on the registration rolls, rather than the fraction voting by mail absentee in regular elections—exponentially increases the chances for fraud.

Add these ingredients to the already boiling pot of fraud in parts of America, and the cooling balm of reform becomes absolutely essential. So what can reasonably be done to minimize, if not eliminate, voter fraud? No system is absolutely foolproof, but one long-term solution made possible by advanced technology stands out from all others: the use of thumbprint scanners to record and identify each voter.<sup>23</sup> At the time of registration, an individual’s thumbprint—unique to every human being—could be scanned by this reliable machine (which is already used at motor vehicle offices in some states). If registration is being done by mail, a print-sensitive adhesive square (covered by a thin removable plastic sheet) can be affixed to the form for the same purpose. The print information would be digitized and stored statewide, and transferred regularly to each locality so that registered citizens can be instantaneously scanned and cleared to vote at their precinct on Election Day. The same thumbprint technology can also make safe the absentee and

early-voting/mail-in ballot process; in addition to the identification requirements, every absentee ballot should be sealed with a thumbprint for secure counting.

Obviously, before this high-tech investment in the scanner hardware and software to convert from the current system will be a costly election in a democracy is a stoppage of the polling place ought to be the goal every

Until that objective is reached, other methods ought to be produced by each voter at the polling place. IDs can certainly be manufactured, but it would cost too much money to do so by any organization attempting to prevent a number of fraudulent votes. Second, voter registration to give a number unique to each voter, a driver’s license number—the voter list provided each precinct’s voters should have to sign his name on the voter list, and the signature can be compared to the one on the voter list to see if they match up.<sup>25</sup> This comparison is only in the event the results of a close election are in doubt, though again, the computer technology for comparing signatures (by electronically scrolling, side by side, the poll signature against the voter signature).<sup>26</sup> Finally, all potential voters at the polls, whether orally by an elections official or in writing, should state, of the eligibility requirements for fraudulent voting.<sup>27</sup> (A similar voter list should be featured on all absentee and early-voting ballots. These four overlapping safeguards are not new, but they would go a long way toward reducing fraud at the precinct stations on Election Day.)

Many other commonsense remedies can be used to neutralize voter fraud, all of which should be used. No early-voting/mail-in and absentee ballots should be counted until they have been carefully checked against the registration information. The envelope containing the marked absentee ballot should be sealed with a thumbprint.

## REMEDIES

permits voters who have moved within the electoral district to vote at either their old or new address by writing "extra-diligent" citizens for their ballot at both locations.<sup>22</sup>

A new wrinkle in the election process is the need to protect the system's integrity. In its December 1995 special election for the U.S. Senate term of the disgraced Robert Packwood, Oregon was the first state to hold a congressional contest by mail to registered voters about three weeks before the primary and general election, with citizens dropping them off at designated sites in the weeks leading up to the official "election day." Officials went to great lengths to prevent fraud, including checking every signature against the registration card original. A progressive step for Oregon elections. Oregon was not a likely candidate for any event. But it is easy to imagine the same process in states with less squeaky-clean traditions.

Mail-in-balloting—which by definition is a change in the registration rolls, rather than the way in which they are used in regular elections—exponentially

increases the already boiling pot of fraud in parts of the country. The implementation of reform becomes absolutely essential to be done to minimize, if not eliminate, the risk. It is absolutely foolproof, but one that is made possible by advanced technology stands in the way. The use of thumbprint scanners to record and verify signatures at the time of registration, an individual's signature—being done by mail, a print-sensitive sheet (thin removable plastic sheet) can be used for the purpose. The print information can be scanned statewide, and transferred regularly to a central database. Registered citizens can be instantaneously verified against their precinct on Election Day. The process can also make safe the absentee and

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early-voting/mail-in ballot process; in addition to current certification requirements, every absentee and early-voting/mail-in ballot should be sealed with a thumb imprint that can be scanned before counting.

Obviously, before this high-tech vision comes to pass, financial investment in the scanner hardware and a lengthy transition period to convert from the current system will be required. But since the most costly election in a democracy is a stolen one, the scanner-secured polling place ought to be the goal everywhere.

Until that objective is reached, other measures should be instituted. At the very least, a photo identification card (of any sort) ought to be produced by each voter at the polls. While phony photo IDs can certainly be manufactured, it takes time, trouble, and money to do so by any organization attempting to generate a sizable number of fraudulent votes. Second, voters should also be asked at registration to give a number unique to them—a social security number, a driver's license number—that can be prerecorded on the voter list provided each precinct's workers.<sup>24</sup> Third, every voter should have to sign his name on the voting roll at the polls, so that the signature can be compared to the one on the registration form to see if they match up.<sup>25</sup> This comparison would probably be made only in the event the results of a close election were challenged (although again, the computer technology already exists for instantaneously scrolling, side by side, the poll signature and the registration signature).<sup>26</sup> Finally, all potential voters ought to be advised at the polls, whether orally by an elections official or by means of a printed statement, of the eligibility requirements for voting and the penalties for fraudulent voting.<sup>27</sup> (A similar warning should be prominently featured on all absentee and early-voting/mail-in ballots.) These four overlapping safeguards are not too burdensome for voters or pollworkers, but they would go a long way toward discouraging fraud at the precinct stations on Election Day.

Many other commonsense remedies are also available to help neutralize voter fraud, all of which should be universally employed. No early-voting/mail-in and absentee ballot should ever be separated from its cover sheet and counted until the voter's signature has been carefully checked against the registration file signature. Every envelope containing the marked absentee or early-voting/mail-in

## REMEDIES

ballot should also be signed by an adult witness whose address should also be listed. (Ideally, these ballots would be notarized, but this involves too much trouble and expense.) And full signatures ought to be written; the Texas "mark" is clearly unacceptable. Also, the number of absentee ballots mailed to a single address should not exceed the number of voters registered at that address. It might also be a good idea to require that an absentee ballot be mailed to the voter's official registration address and no other, unless the voter swears that he will be absent from his locality for the entire duration of the absentee voting period. Every state should have a meticulously maintained, centralized list of registered voters that is frequently purged of duplicate registrations, the deceased, those who have moved out of the district and out of the state, felons, and legal or illegal aliens. (The vital statistics offices, corrections departments, post offices, and other appropriate government agencies should provide this information to each state's elections board at least twice a year.) If, as in Texas, voters are permitted to vote without record of registration—a dubious practice—then at least the ballots ought to be cast provisionally, segregated from the clearly legal ones until their status can be determined. Election laws should always provide stiff penalties for candidates or campaign workers who remain present while a voter casts an absentee ballot. While the outright banning of paid voter registration solicitors is constitutionally untenable, states can eliminate per-person payments to these bounty hunters (thus taking away some of the incentive to register ineligible individuals and animals). States also can and should require regular disclosure filings by all such solicitation groups; the disclosures might include the names and addresses of both the persons employed and the individuals registered. Lastly, the ballots need to be counted in the full view of all interested parties, then professionally secured, sealed, and stored. And any precinct showing a substantial discrepancy between the voter sign-up total and the actual tally of ballots needs to be visited within a day of the election by supervisory officials. Surely, all this is not too much to ask as we prepare to enter the twenty-first century.

These regulations, even if followed to the letter, will be insufficient if (1) registrars and elections offices are not staffed and funded adequately; (2) the statutes do not punish fraud severely—major felonies are required, not minor misdemeanors; (3) law enforcement

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authorities do not make voter fraudulent legal penalties against the statutes; and (4) the news media do not voter fraud—a probable prerequisite step would be for every news organization a "campaign corruption hotline," meet the media's exposing push-polling.

We believe that these reforms will be corrupt practices that have been our book. But we have more fundamental operation of the country's political and the targeted remedies do not address must necessarily be greater than the reforms.

This is usually the point at which idealistic idealists call for the creation of United States, or rigid term limits for year terms for the House of Representatives of congressional elections. But in our view (for now) impractical pipe dreams, unparliamentary system's unitary executive centuries of American tradition, and the elite movement to undertake such a dramatic many good arguments against legislation swayed by their proponents, including that limits on legislative tenure bring staffers, bureaucrats, and the executive terms for the House, with elections coincident, eliminate useful midterm court. And while we favor certain forms of political mailings for congressional challengers, political contributions, there is enormous the electorate to initiating full taxpayer campaigns in an era of large budget mental services.

We prefer more realistic macro-remedies the next section.

By an adult witness whose address these ballots would be notarized, but (2) the cost of the process (time and expense.) And full signatures, "mark" is clearly unacceptable. Also, ballots mailed to a single address should not be registered at that address. It might also be an absentee ballot be mailed to the press and no other, unless the voter is in his locality for the entire duration. Every state should have a meticulous list of registered voters that is free of registrations, the deceased, those who have moved out of the state, felons, and legal disabilities. State offices, corrections departments, and other government agencies should provide the state's elections board at least twice a year—permitted to vote without record of a felony—then at least the ballots ought to be kept from the clearly legal ones until the election. Election laws should always provide for campaign workers who remain present on absentee ballot. While the outright use of money solicitors is constitutionally unacceptable, person-to-person payments to these bounty hunters of the incentive to register ineligible voters also can and should require registration of solicitation groups; the disclosures of addresses of both the persons employed and the interested parties, then professionally run precinct showing a substantial margin of margin-up total and the actual tally of a day of the election by supervisory staff. (1) law enforcement, if allowed to the letter, will be insufficient. (2) law enforcement offices are not staffed and funded to punish fraud severely—major misdemeanors; (3) law enforcement

authorities do not make voter fraud a priority and press for substantial legal penalties against those found violating the fraud statutes; and (4) the news media do not begin to look for evidence of voter fraud—a probable prerequisite to their finding it. A good first step would be for every news organization to establish and publicize a "campaign corruption hotline," mentioned earlier in the context of the media's exposing push-polling.

We believe that these reforms will help to counteract the individual corrupt practices that have been our focus in the chapters of this book. But we have more fundamental concerns about the current operation of the country's political and governmental system that the targeted remedies do not address. The big-picture reform plan must necessarily be greater than the sum of the specific targeted reforms.

This is usually the point at which our fellow academic or journalistic idealists call for the creation of a parliamentary system in the United States, or rigid term limits for all elected officials, or four-year terms for the House of Representatives, or full public financing of congressional elections. But in our view, these solutions are either (for now) impractical pipe dreams, unwise alternatives, or both. The parliamentary system's unitary executive-legislature is alien to two centuries of American tradition, and there is no serious popular or elite movement to undertake such a drastic change. In our opinion, many good arguments against legislative term limits remain unanswered by their proponents, including the inevitable power shifts that limits on legislative tenure bring to lobbyists, experienced staffers, bureaucrats, and the executive branch generally. Four-year terms for the House, with elections coinciding with the one for president, eliminate useful midterm course corrections by the voters. And while we favor certain forms of public financing, such as free mailings for congressional challengers and tax credits for small political contributions, there is enormous opposition in Congress and the electorate to initiating full taxpayer funding of House and Senate campaigns in an era of large budget deficits and cuts in governmental services.

We prefer more realistic macro-remedies that will be explained in the next section.

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- 102. Interview with Ed Rollins, May 26, 1995.
- 103. The author of the observation is journalist Marc Mappen. See the retelling of a classic 1889 ballot-box stuffing in Hudson County in Marc Mappen, "Jersey-ana," *New York Times*, November 13, 1994, section 13, p. 17.

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### Notes

4. All those who study the tenets of party-responsible government inevitably return to the landmark report of the Committee on Political Parties of the American Political Science Association (APSA), *Toward a More Responsible Two-Party System* (New York: Rinehart, 1950). Essentially, this APSA Committee urged the parties to be more issue-oriented by offering the voters clear policy choices at election time, then following up once in power to see that these policies were enacted.
5. See "No More Cash in New Jersey," *Political Finance and Lobby Reporter* 15 (February 9, 1994): 8. See also Bruno Tedeschi, "Pascarella Paid Out \$14,360 in Street Money, by Check," *Bergen Record*, June 1, 1994, p. C1. This latter story reports that the new check requirement worked well in its first test. See also the well-written New Jersey statute, C.19:44A-11.
6. Lists of subcontractors should be appended to all campaign finance disclosure filings sent to the appropriate federal and/or state election commissions as currently scheduled.
7. 18 USC § 597.
8. In addition to our own examination of this issue, a 1982 study convincingly demonstrated the political utility of the frank. See Albert D. Cover and Bruce S. Brumberg, "Baby Books and Ballots: The Impact of Congressional Mail on Constituent Opinion," *American Political Science Review* 76 (June 1982): p. 347.
9. While Republicans limited mailings in the ninety days before an election and trimmed the budget somewhat, we do not count these reforms as the major surgery that is required.
10. We believe the major party candidate should be entitled to one or two mass mailings for the general election, and only independent candidates who received (or whose party received) at least 10 percent of the vote in at least one of the previous three general elections should be eligible for the same privilege.
11. Former Senator Howard Cannon (Democrat of Nevada) and Representative William Clay (Democrat of Missouri) were both the subject of private civil suits alleging misuse of staff. Clay lost the suit, Cannon won.
12. Interview with Thomas Guterbock, director of the University of Virginia Survey Research Center, February 10, 1995. The National Council on Public Polls issued a statement in May 1995 calling push-polling "thoroughly unethical." See "Beware of Push-Polls," Press Release of the National Council, May 22, 1995.
13. Many respondents hang up before a survey is completed. Pollsters should not be required to recontact them to reveal sponsorship.
14. Pollsters should *not* be required to ask all respondents whether they would like a copy of the questions. This must be initiated and volunteered by the respondent.
15. The Supreme Court ruled in an anonymous political pamphlet that mandatory disclosure was a close reading of the justices' opinions indicates that it is unlikely that beyond this narrow exception for ads, radio spots, and—one we suspect would all probably pass the *Elections Commission*, 61 LW 4.
16. Respondents who request sponsoring the interview can be told it.
17. Two members of Congress, U.S. Representative (Republican of Wisconsin) and California Senator are among those urging strong disclosure, while Petri wants questionnaires, filed with the F.
18. In addition to the general remedy there may be two specific legal claims. In 1994, Congress enacted the Telephone Consumer Protection Act (P.L. 103-198) which prohibited in 1994 USCAAN §108 S. 108. It limits commercial telemarketers to enact rules that require consent that telemarketers may not make phone calls that are abusive of such consumer's right to privacy during hours of the day and night when they are not at home to consumers" (sec. 3(a)(3)(A)-(B)). These provisions apply to push-polling, and they do not significantly affect strict candidates' ability to disseminate information. They prevent the worst abuses, such as chapter 9.

Moreover, some affected candidates may have a tort legal claim of defamation against the telephoner (if the telephoner is identified). In order to succeed in a claim for defamation against the maker of the statement, the party must prove that the statement is false and is defamatory. (*Prosser & Keeton*, Minn.: West Publishing, 1984), pp. 10-11. For action for slander (verbal statements), actual damage

15. The Supreme Court ruled in a recent Ohio case on April 19, 1995, that anonymous political pamphleteering was protected free speech, and that mandatory disclosure was a violation of the First Amendment. But a close reading of the justices' varying opinions in this fractious 5-4 ruling indicates that it is unlikely that the anonymity privilege will be expanded beyond this narrow exception. Required sponsorship disclosure for TV ads, radio spots, and—one would presume—telephone persuasion messages would all probably pass constitutional muster. See *McIntyre v. Ohio Election Commission*, 61 LW 4279.
16. Respondents who request sponsorship information at the start of or during the interview can be told it will be revealed at the end.
17. Two members of Congress, U.S. Representatives Thomas E. Petri (Republican of Wisconsin) and Carolyn Maloney (Democrat of New York), are among those urging strong action. Maloney favors pollster sponsorship disclosure, while Petri wants political poll information, including the questionnaires, filed with the FEC.
18. In addition to the general remedies for push-polling that we discuss here, there may be two specific legal remedies that can be applied. First, in 1994, Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act (P.L. 103-297, 103d Cong., 2d Sess., 1994, published in 1994 USCAAN [108 Stat.] 1545 [1994]). Designed primarily to limit commercial telemarketers, the law instructs the Federal Trade Commission to enact rules that include, among other things, "a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls that the reasonable consumer would consider coercive or abusive of such consumer's right to privacy," and "restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers" (sec. 3(a)(3)(A)-(B)). These restrictions presumably would apply to push-polling, and they ought to be upheld by the court because they do not significantly affect the content of the polling, or unduly restrict candidates' ability to disseminate their message. Such rules should prevent the worst abuses, such as the midnight phone calls discussed in chapter 9.

Moreover, some affected candidates may be able to pursue a successful tort legal claim of defamation against push-poll telemarketers (assuming the telephoned are identified). In order to establish any private tort claim for defamation against the maker of a statement, the allegedly defamed party must prove that the statement has been disseminated to a third party and is defamatory (*Prosser and Keeton on Torts*, 5th ed. [St. Paul, Minn.: West Publishing, 1984], pp. 797-802.) In order to establish a cause for action for slander (verbal statements, as opposed to libel, involving written statements), actual damages must be proven, except in the case of



### Notes

a few narrow classes of cases. Among those exceptions, however, are statements "affecting the plaintiff in his business, trade, profession, office or calling."

Under the standard of *New York Times v. Sullivan* (376 U.S. 254 [1964]), any defamatory statements made about public officials relating to their conduct in office must be made with "actual malice" for there to be any knowledge of its falsity or reckless disregard in determining its truth; as "actual malice" has been applied in the case law, it has proved an exceedingly difficult threshold to cross. For political candidates, the courts seem willing to find a valid claim for defamation in only the most egregious cases and would require outright lies, and not simply innuendo or twisting or misrepresentation of the facts.

19. The act was officially termed the "National Voter Registration Act of 1993" (Public Law 103-31, 103d Cong., 1st sess., May 20, 1993). See Richard Sammon, "Senate Kills Filibuster Threat, Clears 'Motor-Voter' Bill," *Congressional Quarterly Weekly* 51 (May 15, 1993): 1221.
20. Besides the motor vehicle agencies, these offices include those providing food stamps, Aid to Families with Dependent Children (AFDC), the Women, Infants, and Children (WIC) food program, disabilities assistance, armed forces recruitment, and the like.
21. Under the provisions of the motor-voter law, states are prohibited from purging eligible voters from the registration rolls for federal elections because of the person's failure to vote (P.L. 103-31 § 8[b]2). Thus, the primary tool traditionally used by registrars to remove "deadwood" voters has been stripped away for federal elections. This is in spite of recent research indicating that the antipurging provisions of the motor-voter law may be among the least useful in increasing voter registration. See Stephen Knack, "Does 'Motor-Voter' Work? Evidence from State-Level Data," *Journal of Politics*, 57 (August 1995): 796-811 at 804-5.

States may remove deceased registrants (§ 8 [a]3[B]), as well as those ineligible under state law because of criminal conviction or mental incapacity (§ 8 [a]3[B]). Voters may also be removed at their own request.

However, in order to remove voters who have moved from the jurisdiction, registration officials now must follow an exceedingly complicated notice procedure. After receiving changes of address information from the post office, the registrar must send the voter by forwardable mail a notice including a postage prepaid, preaddressed return card for the voter to confirm his new address. (If the voter has moved out of the jurisdiction, he must be told how to remain eligible). Any voter not returning the card still must be permitted to vote at either his past or present address (upon discretion of state officials) provided he makes an oral or written verification of his new address (8 [a]). Voters who have moved from the registration area may only be stricken from the rolls if they (1) confirm

their new address in writing, (2) their new address and fail to vote at elections. In the latter case, up from the time of a voter's relocation.

As one commentator notes, caused acrimony and confusion in Louisiana, Michigan, Mississippi were sued by the Justice Department for non-compliance with the act. All states eventually agreed to comply with the act. All states eventually agreed to comply with the act. All states eventually agreed to comply with the act. All states eventually agreed to comply with the act.

In California, Governor Pataki's agencies from complying with the act. Government agreed to put up the cost \$1 million per year in one year. Looming as State Snubs 'Motor-Voter' Member 4, 1995, p. A1; and Gary Klintworth, "Million a Year," *Sacramento Bee* (March 4, 1995): 1. Pennsylvania fought harder than Pennsylvania because the states—ultimately voter registration. Federal court found this argument on March 30, 1995-3055 [E.D. Pa., March 30, 1995]. Claim, *Motor-Voter Law* (April 10, 1995, p. 3).

Meanwhile, Pennsylvania's federal law caused conflict in early 1995 of purging state law by refusing to purge 60,000 Back as Voters p. B1, and Bob Laylo, "Federal Rolls," *Allentown Morning Call* (March 10, 1995): 1. continues, because as of May 1995 motor-voter provisions for federal nonfederal elections. Thus a voter who moves from one state to another but remain eligible for federal elections but remain eligible for state elections. Byzantine consequences are in mind with the motor-voter act.

22. See "Report of the 1995 Electi

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 the rolls if they (1) confirm

their new address in writing via the reply card, or (2) they do not confirm their new address and fail to appear to vote for two federal general elections. In the latter case, approximately four to five years could elapse from the time of a voter's relocation to the removal of his or her name.

As one commentator noted, "The provisions of the federal law have caused acrimony and confusion in many states. Six states—California, Louisiana, Michigan, Mississippi, Pennsylvania, and South Carolina—were sued by the Justice Department and voter-advocacy groups to force compliance with the act. All of these states had failed to pass corrective legislation to bring their voting regulations into compliance with the federal law." (See Ann Scott Tyson, "Illinois Court Drives Motor-Voter Debate," *Christian Science Monitor*, May 8, 1995, p. 3.) Federal judges in several states sided with the federal government, and all of the renegade states eventually agreed to comply.

In California, Governor Pete Wilson issued an order forbidding state agencies from complying with the act's provisions until the federal government agreed to put up the money to pay for the changes, estimated to cost \$1 million per year in one county alone. (See Brad Hayward, "Battle Looming as State Snubs 'Motor-Voter' Law," *Sacramento Bee*, December 4, 1995, p. A1; and Gary Pitzer, "Voter Law Could Cost County \$1 Million a Year," *Sacramento Bee*, November 117, 1994, p. N1.) None fought harder than Pennsylvania, which claimed that the act was unconstitutional because the states—and not Congress—have the power to regulate voter registration. Federal Judge Ronald L. Buckwalter rejected this argument on March 30, 1995, becoming the third federal judge to find the act constitutional. (See *U.S. v. Pennsylvania*, PICS Case No. 95-3055 [E.D. Pa., March 30, 1995]; "Pennsylvania Loses Constitutional Claim, Motor-Voter Law Held Valid," *Pennsylvania Law Weekly*, April 10, 1995, p. 3.)

Meanwhile, Pennsylvania's failure to conform its voting regulations to federal law caused conflict for county registrars, who were left with the option in early 1995 of purging voters in violation of federal law, or violating state law by refusing to purge (see Frank Devlin, "Candidates Want 100,000 Back as Voters," *Allentown Morning Call*, May 10, 1995, p. B1, and Bob Laylo, "Federal Law Keeps 2,300 Non-Voters on Carbon Rolls," *Allentown Morning Call*, April 14, 1995, p. B.3). The confusion continues, because as of May 1995 Pennsylvania had complied with the motor-voter provisions for federal elections but retained the old rules for nontederal elections. Thus a voter could be purged for state and local elections but remain eligible to vote in federal races. These potentially Byzantine consequences are hardly what congressional drafters had in mind with the motor-voter act.

22 See "Report of the 1995 Elections Summit," April 1995, p. 40, also 38-41.

Notes

23. See "Report of the 1995 Elections Summit," p. 14. See also Doug Haaland and Doug Swordstrom, "A Report on Election Law Irregularities: California 16th Senate District," personally published report, January 27, 1995, p. 11.

Fingerprint scanning technology has advanced quickly since the 1980s and has become available for a wide range of relatively inexpensive identification and fraud prevention applications. The scanners rely upon sophisticated laser scanners (such as supermarket barcode scanners) and computer databases and can be more accurate than ink and paper prints (which can smudge) and the human eye. Some government agencies at the federal, state, and local level already use fingerprint scanners, and others have conversion plans in the works. Scanners have obvious applications in the field of law enforcement and are being implemented at all levels of government as a means of positively identifying suspects or inmates. The Federal Bureau of Investigation is in the process of creating a central fingerprint database, which would vastly reduce the time required to find print matches. Some state and municipal departments have already converted to the new fingerprinting technology, as in California, including San Diego and Los Angeles. (See Ronald J. Ostrow, "FBI Nabs New Technology for Fingerprint System," *Los Angeles Times*, April 3, 1995, p. A1; and J. Harry Jones, "Now Its Harder to Hide: Computer Net Checks Prints at the Touch of a Key," *San Diego Union-Tribune*, February 1, 1994, p. B1.) California also uses a fingerprint scanning system to verify identity for drivers' licenses. The Secret Service has recommended a similar system to prevent fraudulent use of the experimental welfare debit card. (See Associated Press, "Crooks Devise Ways to Defraud Welfare Debit-Card System," *Rocky Mountain News*, January 11, 1995, p. A41.) Others are experimenting with this technology for use with credit or debit cards and automatic teller machines.

Interestingly, Mexico has implemented a sophisticated fraud prevention program to enhance the legitimacy of its electoral system. One of the safeguards was a laminated identity card sealed with a hologram, computer bar code, and thumbprint. (See Mark Fineman, "Anxious Mexicans Await Day of the Vote," *Los Angeles Times*, August 21, 1994, p. A1.)

Conceivably, costs could be minimized through developing a multiple application system in conjunction with motor-voter provisions requiring registration at welfare offices and motor vehicle departments. A single system could establish a rate fingerprint file for entitlement eligibility, vehicle registration, or registration to vote (as long as separate databases were established).

24. A recent federal case may prevent the use of voters' social security numbers. To comply with *Gredlinger v. Davis*, (988 F.2d 1344 [4th Cir. 1993]),

it would not be lawful to display numbers except to prevent voting would make the proposition in Virginia, where social security numbers.

25. Those unable to sign their name, should be required to sign with that witnessed and attested in conjunction with a request should not create a significant barrier.

26. Haaland and Swordstrom, p. 11. This technology, known as a computer pad and pen to recognize handwriting for identification. A variety of reasons for not using recognition is a generally recognized barrier. Betsy Pisk, "Smart Card" Consumers," *Washington Times*

This technology "captures" a signature on a computer pad, and converts it into a digital format for storage in a computer database. One application already used is the familiar "Smart Card" record their signature on a card, which is currently available for retail sale, such as booksellers Barnes & Noble, Computers & Auto (1994, p. A4.)

27. Haaland and Swordstrom, p. 16. Although this mechanism, "ballot security" programs, are designed to distinguish this process from coercion potential voters, identification documents, and would disclose the land (and are to be in violation of § 7 [a][6][a]). While offering notice would not cause the land notification would be delayed, neutral polling zone. While elections officials could be in violation of public nature of the forum, officials do not need to open notification could be careful

14. See also Doug Haaland  
 Election Law Irregularities: Cali-  
 fornia Report, January 27,

since the 1980s  
 relatively inexpensive iden-  
 tification (The scanners rely upon so-  
 called bar code scanners) and  
 ink and paper prints  
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 refer to Hide; Computer Net  
 San Diego Union-Tribune, Febru-  
 ary 1995. Service has recommended  
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 fare News, January 11, 1995,  
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 August 21, 1994, p. A1.)  
 through developing a multiple  
 voter provisions requiring  
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 long as separate databases

voters' social security num-  
 ber (2d 1344 [4th Cir. 1993]).

it would not be lawful to distribute any list containing voters' social secu-  
 rity numbers except to precinct workers and elections officials. This rul-  
 ing would make the proposal above difficult to enact in a state such as  
 Virginia, where social security numbers are in fact used as drivers' license  
 numbers.

25. Those unable to sign their names, for reasons of illiteracy or physical in-  
 ability, should be required to give their mark, so that it can be compared  
 with that witnessed and attested on their registration form. When done  
 in conjunction with a requirement to show a photo identification, this  
 should not create a significant potential for fraud.

26. Haaland and Swordstrom, "A Report on Election Law Irregularities,"  
 p. 11. This technology, known as signature recognition, utilizes a com-  
 puter pad and pen to recognize the size, pressure, and direction of a sig-  
 nature for identification. Although any one individual's signature may  
 vary for a number of reasons, such as natural change over time, signature  
 recognition is a generally reliable means of determining authenticity. (See  
 Betty Pisk, "'Smart Card' Security: High-Tech ID System for Future  
 Consumers," *Washington Times*, April 16, 1995, p. A11.)

This technology "captures" the user's signature on the pressure-sensi-  
 tive pad, and converts it into a graphic file that can easily be stored in a  
 computer database. One application for which signature recognition is al-  
 ready used is the familiar UPS clipboard, on which package recipients  
 record their signature on a small pressure-sensitive pad. A similar system  
 is currently available for retail merchants and has been used by companies  
 such as booksellers Barnes & Noble. (See Lisa A. Spiegelman, "Executive  
 Update, Computers & Automation," *Investor's Business Daily*, August 10,  
 1994, p. A4.)

27. Haaland and Swordstrom, "A Report on Election Law Irregularities,"  
 p. 16. Although this mechanism has been used in the past by Republican  
 "ballot security" programs, it is necessary to note several crucial differ-  
 ences that distinguish this proposal from knowing attempts to intimidate  
 or coerce potential voters. First, the statement would appear on official  
 documents, and would disclose requirements which are, after all, the law  
 of the land (and are to be provided with mail registration forms as per  
 § 7 [a][6][a]). While offering a disincentive to fraudulent voters, such a no-  
 tice would not cause the law-abiding citizen concern. Second, any oral  
 notification would be delivered by officials of the election board in the  
 neutral polling zone. While we are aware that, in extreme cases, even  
 elections officials could be implicated in attempts to intimidate voters, the  
 public nature of the forum would prevent most mischief (and crooked of-  
 ficials do not need to openly intimidate voters in any case). Further, oral  
 notification could be carefully monitored in areas with poor civil rights or

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- voting rights records, to prevent discrimination against minority groups. Finally, it would eliminate the ostensible justification for ballot security programs intentionally aimed at decreasing minority group turnout, and would expose the less savory goals actually behind such programs.
28. Under § 8 (c)(B) of the motor-voter act, names can be removed from the registration list on the basis of death (§ 8 [a][4][A]), or criminal conviction or mental incapacity (§ 8 [a][3][B]). Removal of duplicate registration would probably be allowed by § 8 (c)(B)(ii), which permits "correction of registration records pursuant to this act." However, it would be necessary to show a convincing, clear indication of duplication, such as the use of a number unique to the registrant, as suggested above.  
Changes of address fall under the complicated procedures of § 8 (d)-(e), and anyone moving within the jurisdiction must have his or her address corrected automatically by the registrar. Any regular effort to purge must be ninety days before the federal election (primary or general) (§ 8 [c][2][A]). Aliens are a different matter entirely. Potential registrants are to be notified of citizenship requirements and attest that they fulfill all obligations, under the penalty of perjury (§ 7 [a][6][A]), but the information gathered for voter registration purposes *must not* be used for other purposes. Therefore, if the registrar discovers the person is registered illegally because he or she fails to meet citizenship requirements, the registrar cannot forward this information to other agencies for which citizenship is a concern (such as Immigration and Naturalization, Aid to Families with Dependent Children, or Women, Infants, and Children).
  29. Brooks Jackson, *Broken Promise: Why the Federal Election Commission Failed* (New York: Priority Press Publications, 1990), p. 2.
  30. Address to the National Press Club, July 5, 1995 (Federal Document Clearinghouse, Inc.).
  31. *Code of Federal Regulations, Federal Elections* (Washington, D.C.: Government Printing Office, 1995).
  32. *Statement of the Committee Following Hearing, Involving Senators Cranston, DeConcini, Glenn, McCain and Riegle*, Senate Select Committee on Ethics, 102d Cong., 1st sess., 1991.
  33. We are indebted to attorney Jan Baran of the law firm Wiley, Rein & Fielding for this analogy.
  34. *Buckley v. Valeo*, 424 U.S. 1, at 60-7 (1976).
  35. This is among the many fundamental decisions made by the Supreme Court in *Buckley v. Valeo*.
  36. Interview with Trevor Potter, July 12, 1995.
  37. Indexing for inflation should be provided for.
  38. The exception are some so-called nonconnected PACs, that is, PACs not formally associated with a trade or interest group.
  39. Most notably the Washington
  40. Kenneth A. Gross, "The E System in Search of Reform
  41. Frank Sorauf, one of the m raised the possibility that "v fice is intrinsically committ winners." Frank J. Sorauf, 1992," in James A. Thurber *Elections American Style* (Bo
  42. For a cogent review of the l *Finance: Myths and Realities* 1992), pp. 215-16. There is view. For instance, Christu that those who say that the l glect the interrelationship o ducing the outcome of th partially a function of cha spend more, incumbents r greater outlays. When this challenger and incumbent races; Kenny and McBurnet fect is statistically significant Level Multiequation Model Elections." *American Polit.* 699-707).
  43. See "Campaign Finance Re Minority Leader, United Sta Panel," March 6, 1990, p. 41 members, appointed by the (Democrat of Maine) and th publican of Kansas).
  44. *Buckley v. Valeo*, 424 U.S. 1
  45. See Larry J. Sabato, *Paying* (New York: Twentieth Ce 25-42, 61-64. For example, butions to foundations tha These foundations often pa mote their candidate-creator
  46. The Campaign Finance Re free broadcast time proposal
  47. Remarks delivered at the May 5, 1995, p. 7. Hundt b

ation against minority groups, justification for ballot security, minority group turnout, and behind such programs.

mes can be removed from the [§]A), or criminal conviction (al of duplicate registration which permits "correction of" however, it would be necessary application, such as the use of a ad above.

icated procedures of § 8(d). ion must have his or her ad. : Any regular effort to purge ection (primary or general) entirely. Potential registrants and attest that they fulfill all [§]A), but the informa- s must not be used for other is the person is registered il ship requirements, the regis- other agencies for which and Naturalization, and to en, Infants, and Children) Federal Election Commission is, 1990), p. 2

8, 1995 (Federal Document Washington, DC Govern

earing, Involving Senator, ie, Senate Select Committee

the Law firm Wiley, Rein &

ions made by the Supreme

ed PACs, that is, PACs not oup

39. Most notably the Washington-based Center for Responsive Politics.
40. Kenneth A. Gross, "The Enforcement of Campaign Finance Rules: A System in Search of Reform," *Yale Law & Policy Review* 9 (1991): 279.
41. Frank Sorauf, one of the most astute students of campaign finance, has raised the possibility that "voluntary funding of campaigns for public office is intrinsically committed to the support of incumbents and likely winners." Frank J. Sorauf, "Competition, Contributions, and Money in 1992," in James A. Thurber and Candice J. Nelson (eds.), *Campaigns And Elections: American Style* (Boulder, Colo.: Westview Press, 1995), p. 81.
42. For a cogent review of the literature, see Frank Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven, Conn.: Yale University Press, 1992), pp. 215-16. There is an increasing number of dissenters to this view. For instance, Christopher Kenny and Michael McBurnett argue that those who say that the level of incumbent spending has no effect neglect the interrelationship of challenger and incumbent spending in producing the outcome of the election. Incumbent spending is at least partially a function of challenger spending, that is, when challengers spend more, incumbents respond to the increased competition with greater outlays. When this interrelationship is taken into account, both challenger and incumbent spending levels affect the outcomes of the races. Kenny and McBurnett provide empirical evidence to show the effect is statistically significant. (See Kenny and McBurnett, "An Individual Level Multiequation Model of Expenditure Effects in Contested House Elections," *American Political Science Review* 88 (September 1994): 699-707)
43. See "Campaign Finance Reform: A Report to the Majority Leader and Minority Leader, United States Senate, by the Campaign Finance Reform Panel," March 6, 1990, p. 41. Coauthor Sabato was one of the panel's six members, appointed by then Senate Majority Leader George Mitchell (Democrat of Maine) and then Senate Minority Leader Robert Dole (Republican of Kansas)
44. *Buckley v. Valeo*, 424 U.S. 1 (1976).
45. See Larry J. Sabato, *Paying for Elections: The Campaign Finance Thicket* (New York: Twentieth Century Fund/Priority Press, 1989), esp. pp. 25-42, 61-64. For example, disclosure laws do not currently cover contributions to foundations that presidential candidates sometimes form. These foundations often pay for pre-campaign travel, and openly promote their candidate-creator.
46. The Campaign Finance Reform Panel mentioned above endorsed the free broadcast time proposal in *ibid.*, pp. 25-42.
47. Remarks delivered at the Nieman Foundation, Harvard University, May 5, 1995, p. 7. Hundt has proposed making these new frequencies

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available under two government-imposed restrictions: (1) some broadcast time must be devoted to educational programming for children, and (2) free broadcast time must be given to political candidates and parties. See also Max Frankel, "Airfill," *New York Times Magazine*, June 4, 1995, p. 26; and Mary McGrory, "The Vaster Wasteland," *Washington Post*, June 4, 1995, p. C1.

48. Given the importance of the data, as well as their complexity, a computerized database for campaign finance reports is an essential component of a fair, accountable electoral finance system. Most state agencies that oversee campaign finance have entered the computer age (as the Council of State Government reports, in 1992 virtually all state election boards or ethics boards already had some computing capacity). In addition, states should provide public access to their computerized reports, or in the optimal case, follow the lead of the Federal Election Commission and make an on-line database available for public access (as Alabama, Alaska, Hawaii, Texas, and Washington already have). The FEC database, for instance, made possible much of the authors' research into campaign contributions. It must be noted, however, that any on-line system is limited by the data made available by the provider. A frequent criticism of the FEC is that expenditure reports are not available on the on-line system, although tracking where candidates spend their war chests is frequently as interesting as, and in some cases more interesting than, where their funding originates.

Council of State Governments listed sixteen states (Alabama, California, Colorado, Idaho, Indiana, Iowa, Illinois, Nebraska, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, and Washington) as having no contribution caps for any state or local offices. The council also listed twenty-five states that have at least some limits, which vary by primary or general election and office: Alaska, Arkansas, Connecticut, Delaware, Georgia, Florida, Hawaii, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Oklahoma, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming. Puerto Rico also has contribution caps for general elections. One state actually does perform random audits on campaign finance reports—California. The Franchise Tax Board randomly audits lobbyists and campaign finance reports.

50. The Council of State Governments listed twenty-eight states as having ethics commissions as of 1992: Alabama, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, and Wisconsin.

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## THE ROCKINGHAM NEWS

### Vote facts sent to AG

By Adam Leech  
rockinghamnews@seacoastonline.com

SANDOWN - The New Hampshire attorney general's office has requested election information from several town officials this week following complaints of voting irregularities during the March 9 municipal races.

Following the election, the supervisors of the checklist who oversee the town elections forwarded a list of irregularities to the Board of Selectmen. Selectmen then sent the list on to the attorney general.

The supervisors' complaints included allegations that a non-resident voted, ballots were accepted without proof of identification, two voting machines malfunctioned, ballots were written in a confusing manner, lines were excessively long and discouraged voting, an elderly resident was denied assistance and several voters were deemed suspicious.

Those defending the election process said that a near-record turnout of 1,418 voters, 49 percent of those registered, simply overwhelmed poll workers.

Orville B. Fitch, an assistant attorney general who requested the information, said it is the policy of the attorney general's office not to acknowledge publicly that an investigation is taking place to prevent the misuse of the process.

He was, however, willing to speak in general about how the state investigates election complaints.

Fitch said each election investigation varies in how it is conducted, what is investigated and how long it takes.

As an example, Fitch said if there was an accusation that a non-resident had wrongfully voted in a town, the attorney general's office would look for evidence

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of where the person was living by investigating where the party slept most nights, where their vehicle was registered, where their address on their driver's license indicates they live and where their children go to school.

In order for the attorney general's office to request the state Superior Court nullify the election and require a revote, there must be serious misconduct or evidence of fraud. Even then, according to Fitch, the town may not have to have a revote if the incident couldn't reasonably have affected the outcome of the election.

The attorney general's office gets about 100 to 125 complaints a year, according to Fitch, and there has not been a nullification in a number years, though he could not be specific as to how many.

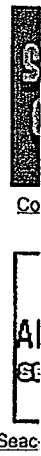
Other than requesting a revote, Fitch said the attorney general's office has a general duty to enforce election laws and can bring charges against a party, issue a letter of reprimand or make recommendations for better election practices.

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Verifying  
registration

NJ

## GOP: Gov.'s bill would encourage voter fraud

Thursday, January 08, 2003

By **TERRENCE DOPP**  
Trenton Bureau

TRENTON -- The floodgates for rampant voter fraud would be thrown wide open under legislation being pushed by Gov. James E. McGreevey, Republicans charged Wednesday.

A bill up for a vote in the state Senate would prohibit so-called "third party" registration groups and poll workers from checking voters' identification. Administration officials said the checks would prove a deterrent to some urban voters with little identification.

But critics of the plan maintain it would inject uncertainty into the process by making it unclear exactly who is voting and how often.

"You can't put people through the third degree to vote or else no one would vote. People should not be hassled before they enter the voting booth," said McGreevey spokesman Micah Rasmussen. "He wants as many people to exercise their rights as possible."

Legislators in the Assembly passed the measure 72-3 on Dec. 15.

The bill is an updated version of one McGreevey vetoed Dec. 8 because he said it was too strict in requiring the identity checks. It springs from the federal Helping America Vote Act (HAVA) passed in October 2002 after the contested presidential election two years before.

State funding for election reforms, establishing a grievance procedure for those who feel they've been wronged at polls and a limited prohibition on paper ballots were part of the original bill. It also doled out about \$4 million in federal funding.

Rasmussen said state election monitors told the administration to change the bill to match federal requirements, which do not allow identity checks.

Ramon de la Cruz, the state's lead figure in enacting HAVA, said the issue shows the growing pains of states grasping to meet federal guidelines foisted upon states with no appropriation and arbitrarily drawn timeframes.

HAVA was intended to increase voter turnout and to insure all votes are cast legally.

One GOP lawmaker said under McGreevey's HAVA plan, there would be no safeguarding the security or integrity of ballots.

"The governor's recommendations provide that when a person is registered to vote through the actions of a third party, such as through a voter registration drive, no identification shall be required to ensure the identity of that person," Sen. Thomas Kean, R-Union, said in a letter to

029825

Attorney General Peter Harvey calling for a halt to implementing McGreevey's proposal should it clear the Legislature.

"The provision clearly violates both the letter and spirit of the federal law, and invites nothing less than the imprimatur (approval) of the state government for institutionalized voter fraud," Kean added in the letter.

Federal lawmakers issued states a number of mandates with HAVA, including issuing money to scale back the use of paper ballot voting machines. So far the state has received \$13 million under HAVA and is awaiting over \$20 million more, de la Cruz said.

Passage of the act followed the defeat by President Bush of then-Vice President Al Gore after senior citizens in Florida said they voted incorrectly because of punch card ballots.

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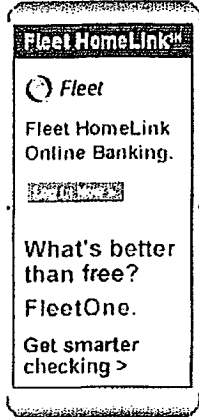
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# Fraud Lawsuit Targets Gerson Election

NY



*Forged Signatures  
ON Petitions*

By Daryl Kahn  
Staff Writer

August 7, 2003, 7:25 PM EDT

According to her death certificate, Elsie Roloan died 9:30 p.m. on June 22, 2001. But her signature appears next to the date June 26, 2003 in an election petition for Manhattan Councilman Alan Gerson and a slate of Democratic judges and party leaders running for office.

This is one of the allegations of election fraud being brought Friday in Supreme Court by a political opponent of the councilman.

The court's decision could determine who will win the race for the 1st District council seat in the heart of the financial district.

The two petitions being challenged, 216 and 219, are, according to court documents, "replete with forged signatures" and note "that it is a travesty for these petitions to have been certified by The Board of Elections."

Among the other allegations made in the court documents are that illegal aliens collected a majority of the signatures, a violation of election law, and that many of the signatures and the witnesses signing them were forged.

Gerson denied the allegations and said that he has no tolerance for "shenanigans" in his campaign. But he added that he and his campaign had nothing to do with the collection of the petitions.

"I have no control or oversight over the petitions in question," he said. "This suit is a total waste of the judiciary's time. It's frivolous."

A candidate is required by law to certify in a cover sheet that the petitions filed with the Board of Elections are valid.

A candidate needs 900 valid signatures to get on the primary ballot. But even if a candidate has enough legitimate signatures, a judge can, if he finds that the petitions are "permeated with fraud," kick a candidate off the ballot.

Norma Ramirez, who filed the suit, said Gerson knew that many of the signatures were fraudulent, including sheet number 126 in petition 219 — where the dead woman's signature shows up.

"Of course he knew," she said.

She said Gerson is part of the city's Democratic Party machine and that these tactics are commonplace.

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"This is about what's been going on for years," she said. "This is about the little people fighting against the machine."

Ramirez was candidate for Female Party Leader in the 64th Assembly District who was knocked off the ballot by a lawsuit brought by Alice Cancel alleging fraud on her petitions. Cancel is also listed on the petition.

The 1st District's borders encompasses one of the most important political regions in the city. Within its borders are the World Trade Center site and the Lower Manhattan Development Corporation steering its future, Wall Street and Chinatown.

The fallout from Friday's decision is crucial because of the party make-up of the district. Like most districts in the city, its voters are overwhelmingly Democrats, at 64 percent. Only 11 percent of the voters are Republican, and the remaining 25 percent are either with smaller parties or unaffiliated.

Political analysts say it is highly likely that the winner of the Sept. 9 Democratic primary will capture the 1st District seat in the November election.

The other names listed on the suit are: John Quinn, candidate for male assembly district leader in the 64th Assembly District, and Shlomo Hagler, Kathryn E. Freed and Marcy Friedman, all Democrats running to fill judge vacancies in Manhattan Civil Court.

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*Informing  
Poll workers  
NY*

September 20, 2001

## Questions Face Elections Board Before Primary

By DIANE CARDWELL

**W**ith less than a week to go before a hastily rescheduled primary, the city's Board of Elections is facing a set of serious challenges, from trying to inform poll workers of the new elections schedule, to figuring out whether possible runoffs in some citywide races would have to be held using paper ballots, to a lawsuit filed by a group of voters and candidates seeking to postpone the primary election yet again.

At a meeting of the board yesterday, commissioners were still debating where the board would operate from next Tuesday, since the attack on the World Trade Center disabled their computer system, too.

"I think they have a very daunting challenge to pull off the primary and the runoff and the general election," said Gene Russianoff, staff lawyer at the New York Public Interest Research Group, who was at the meeting.

Mr. Russianoff said that one of the biggest problems was informing poll workers that they would be needed Tuesday. The board has resorted to advertising in the print media, but the advertisements only announce the date of the rescheduled primary and are not addressed directly to poll workers.

Board officials said yesterday that workers would be told by elections officials, but Mr. Russianoff said that he still had concerns, given "the low amount of information about the election" that had been getting out. "The fear is that maybe some poll sites would not be able to open up," he said.

Another problem facing the board is how to get its 6,700 voting machines ready for a general election after a runoff, said Gary Berzansky, the chief custodian of the machines. With a possible runoff now moved to Oct. 11, he told the board, he would not have enough time to retrieve the machines, tabulate the results and then to prepare and truck the machines out again for the general election. Mr. Berzansky suggested that any runoff be conducted with paper ballots. He said his office was down by 17 technicians and described his staff, which has worked "45 straight days with no day off in sight," as irritable, tired and very upset about the attacks.

One commissioner said paper ballots would subject the board to allegations of manipulating the elections.

"I'm not trying to manipulate any election," Mr. Berzansky replied. "I'm trying to be realistic."

In the end, the board rejected the proposal, even as Mr. Berzansky said that he could not guarantee that the machines would be ready.



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One plaintiff in the lawsuit, Shirley Kwan, who is the campaign treasurer for Kwong Hui, one of the nine City Council candidates who are also plaintiffs in the suit, told the board that the city was not ready for the election.

"Like many other residents who live in the downtown area, we all have been victims of the tragedy and we need time to heal," she said later. Many residents are not getting the services they need, she said, and are so focused on finding places to stay or getting health care that they cannot focus on the election. The state passed legislation this week that will allow anyone in the affected area below Canal Street to vote by mail-in or absentee ballot.

Joseph Gentili, deputy director of the board, declined to discuss the lawsuit, but Mr. Russianoff said that it was not inconceivable that a judge would postpone the election, although the board had already addressed some of the issues the suit raises.

The board also received notice yesterday that the Police Department would be able to provide officers at the 1,300- odd polling sites. Mr. Gentili said that instead of having two officers splitting the shifts at each site, one officer would work for the entire day. The board also learned that the Police Department would not be able to provide an early unofficial count as it has in years past on election night because the computer lines linking the department to the elections board no longer exist. The first results, Mr. Gentili said, would therefore be the board's own official count, which would not be available until later in the week.

Near the end of the meeting, the commissioners discussed the possibility of making a public service announcement to inform those people who voted on Sept. 11, before the election was scuttled because of the attacks, to return to the polls on Tuesday. Mayor Rudolph W. Giuliani was suggested as the person to make the announcement, but Mr. Gentili nipped that idea in the bud.

"I think the mayor has a lot more things to do," he said.

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October 30, 2002

# Breaking News

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TN

## Atchley Named By Mattice As District Election Officer posted October 29, 2002

United States Attorney Harry S. "Sandy" Mattice, Jr. today announced the appointment of Assistant United States Attorney Chuck Atchley to serve as district election officer for the Eastern District of Tennessee.

This appointment was made pursuant to a nationwide Department of Justice Voting Integrity Initiative announced by Attorney General John Ashcroft in Washington, D.C. earlier this month. The purpose of this nationwide federal law enforcement program, which the Department has implemented during national general elections since the late 1960's, is to ensure public confidence in the integrity of the election process by strengthening and enhancing the Department's efforts to protect voting rights and to prosecute election crime throughout the country, officials said.

Mr. Mattice said, "Election fraud dilutes the worth of votes honestly cast. It also corrupts the essence of our representative form of government. As a crime against both the individual and the government, it will be dealt with promptly and aggressively."

As district election officer, Mr. Atchley will supervise the investigation and prosecution of election fraud matters in the Eastern District of Tennessee, and will coordinate the District's efforts with Department of Justice prosecutors in Washington, D.C. As part of his responsibilities as district election officer, Mr. Atchley will supervise a team of Special Agents of the Federal Bureau of Investigation (FBI) during the November 5 election, including the preceding early voting period.

These individuals will be on duty throughout the election period to receive complaints of election fraud. AUSA Atchley can be reached by the public at the following telephone numbers: (865)545-4167 and (865)607-8727.

The FBI also will have special agents available in each field office and resident agency in this district to receive allegations of election fraud during the election period. The FBI can be reached by the public at: (865)544-0751.

Mr. Mattice stated that most forms of election crime are easily recognized, such as voter bribery, voter intimidation, and ballot forgery. Other forms of election fraud are more subtle. It is, for example, a federal offense to seek out the elderly, the socially disadvantaged, or the illiterate for the purpose of subjugating their electoral will. Furthermore, every voter has the right to mark his or her ballot in private, free from the watchful eye of election partisans.

Mr. Mattice said, "The detection of election fraud depends in large part on the watchfulness and cooperation of the American electorate. It is imperative that those who have been asked to participate in questionable election practices, or who have observed or have specific information regarding electoral corruption, make that information available immediately to my Office or to the FBI. The cooperation of this country's citizens in helping to protect the sanctity of the ballot box is crucial."

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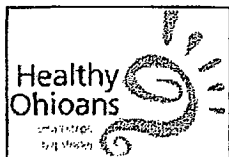
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Columbus Con Artist Poses as Elections Worker *OM*



March 25, 2004

The Franklin County Board of Elections is warning residents of a scam artist. ONN-affiliate WBNS reports that an identity thief is prowling the streets of northeast Columbus. He goes door-to-door asking people to register to vote. He shows them a picture I.D., a clip board and a palm pilot. After he receives personal information, he attempts to steal money.

At least six people have complained to the Board of Elections about the scam, but the county says elections officials don't go door-to-door.

The safest way to register is to contact the Board of Elections directly.

However, not everyone who comes to your door and asks to register you to vote is out to scam you.

Many legitimate groups are having voter registration drives to get more people to the polls for the November elections.

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*ID Theft*

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Elections | Article published Tuesday, December 9, 2003  
LUCAS COUNTY BOARD OF ELECTIONS

# Vote certification prompts recount in 4 local contests

By FRITZ WENZEL  
BLADE POLITICAL WRITER

The Lucas County Board of Elections certified the Nov. 4 general election yesterday, finalizing its results after an arduous process that had elections workers meticulously examining votes cast in every one of the county's 530 precincts.

The certification triggers recounts of four races or ballot issues:

- Sylvania City Council.
- Oregon City Council.
- The village of Waterville.
- The Swanton School District.

No date was set for those recounts, but they'll be done in the next two weeks, said Joe Kidd, elections director.

The board of elections' unusual attention to detail was required after it was discovered that some poll workers had trouble following unfamiliar sets of directions required because of new electronic voting machines. On two earlier occasions, meetings to certify the election were canceled because the board was not finished with its work.

Poll workers also found themselves scrambling on Election Day because they were short-handed. Many booth official jobs went unfilled, elections records show.

Two workers responsible for recruiting Republican poll workers have been suspended for failure to do their jobs. They face a hearing Dec. 16 to determine their employment status.

Mr. Kidd said problems were to be expected because it was the first countywide election using new machines. He said he believes the March primary election will run much better.

In a related matter, the board directed Mr. Kidd to seek more information from the office of Secretary of State Kenneth Blackwell about a January deadline for counties to pick which voting machine they wish to buy under the federal Help America Vote Act.

*In clear instructions for Poll Worker*

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The board wants to know if it will be granted more time to decide in light of a recent study that revealed the machines up for sale in Ohio have security flaws.



Mr. Blackwell has ordered the companies to fix the flaws before their machines are allowed in Ohio, but those repairs are not expected to be completed by the January deadline.

Paula Ross, chairman of the elections board, said she didn't want to be forced to choose voting machines until the flaws are fixed.

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Ohio.com

MISSING  
petitions

Posted on Tue, Sep. 30, 2003

The Beacon Journal

## Summit elections worker fails polygraphs

OH

No. 2 official admitted drug, alcohol use before petition query, sources say

By Julie Wallace  
Beacon Journal staff writer

A Summit County Board of Elections employee quizzed as part of a probe into a candidate's missing petitions failed two polygraph tests after admitting using drugs and alcohol before the tests, law enforcement officials said.

Several sources familiar with the investigation identified the employee -- who was not named in a news release issued Tuesday by the Summit County Sheriff's Office -- as Deputy Director John Schmidt, a Democrat who holds the No. 2 position in the board's office.

Schmidt declined to comment. His lawyer, Carmen Roberto, said Schmidt did not fail the polygraphs; he said the results were inconclusive on both tests.

Sheriff Drew Alexander, a Republican, said 11 full-time employees were asked to submit to lie-detector tests in the investigation into the June disappearance of election petitions belonging to Akron City Councilman Joe Finley, D-2. Finley is a maverick often at odds with his party's local leaders.

Eight of those 11 full-time employees easily passed the polygraph.

Three others were tested twice. Two of them had results that initially were labeled inconclusive but later were determined by polygraph examiner Bill Evans to be truthful.

The third employee also underwent two voluntary tests -- showing up and acknowledging to Evans that he had used marijuana and alcohol prior to the appointments, Alexander said.

Alexander, who declined to confirm that the employee is Schmidt, said no charge would be filed against the employee over his admitted drug use because the tests were voluntary.

"Both times, he failed miserably at over \$500 a pop," Alexander said. "That's enough polygraph examinations. I have no confidence that he'd come in and take a third or fourth and not try to beat it."

### No charge likely now

Alexander said the failed tests elevate the individual to a potential suspect, but no charges are likely at this point.

"He's a person of interest -- certainly a person of interest," Alexander said. "But... we need a witness or a confession. Until one of those two come forth, we just can't arrest on the fact that he failed a polygraph."

Alexander's office released the information as part of a status update on the investigation. It began after Finley discovered his petitions were missing when he went to the board's Grant Street office to have them filed minutes before the 4 p.m. June 26 deadline. He had submitted the petitions earlier that week for signature verification.

A judge ultimately ordered that Finley be placed on the ballot, and elections board officials asked the sheriff's office to investigate the disappearance of the petitions.

Tuesday's update said the board's offices were searched twice, and detectives interviewed 28 of the

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employees. Those 28 were the ones identified as having been around the office from 11 a.m. to 12:30 p.m. June 25 -- the period in which, detectives determined, the petitions had disappeared.

### More interviews

Most of the part-time employees -- generally college-age students who are relatives of political operatives in the area -- have not been interviewed. But after meeting with election officials Monday to brief them on the investigation, the detectives agreed to interview those part-timers.

"They felt we needed to interview everybody," Alexander said. "We interviewed the people we thought were in the area during the timeline when the petitions were missing. But to satisfy everybody, we'll interview everybody."

Detectives will track down those people, many of whom have returned to college. Phone interviews will be arranged if possible; lie-detector tests will be initiated only if something of interest is learned, Alexander said.

Those who worked for the board over the summer include the two children of former Akron Service Director Joe Kidder; the son of Wayne Jones, a leader in the county Democratic Party; the daughter of Akron Council President Marco Sommerville, D-3; the son of Akron Councilman Mike Freeman, D-9; and the son of Kevin Davis, a campaign aide for Akron Mayor Don Plusquellic. The Republican part-timers also had political ties -- albeit to lesser-known precinct committee representatives, rather than officeholders and party leaders.

### Schmidt, lawyer respond

Schmidt, contacted Tuesday, said he couldn't discuss the allegations and would not acknowledge whether he was the employee in question.

Roberto, Schmidt's lawyer, did deny that Schmidt had admitted using drugs or alcohol before either of his tests.

"I was at the second test. It did not happen," Roberto said.

If investigators ask Schmidt to take a drug test, Roberto said he would encourage his client to do so.

Schmidt, a Cuyahoga Falls City Councilman, was hired at the elections board in September 2002 to replace Yolanda Walker, who took a job leading the Summit County Solid Waste Authority.

Russ Pry, chairman of both the Summit County Democratic Party and the elections board, said he expects the allegations in Alexander's news release will be the topic of an upcoming executive session of the elections board.

Board Director Edna Boyle, a Republican who took over at the board at the end of July, said personnel problems exist that the board needs to address.

"Those are very serious allegations that are made in the statement, and I hope they are dealt with as soon as possible so we can get back to the reason we are here -- to have fair elections," Boyle said. "We need to not lose focus of that here, and I'm afraid we will with all that is going on."

Alex Arshinkoff, chairman of the Summit County Republican Party and an elections board member, said the release is the latest blow to the troubled board.

"This matter is bad enough in and of itself, but what makes it more troubling is that the petition that was stolen is a Democrat who is a maverick and who has endorsed the Republican candidate for mayor, Bryan Williams," the GOP leader said.

"It certainly adds another element of discomfort for the Board of Elections inasmuch as it adds another layer of politics to this outcome and action."

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## The 2002 Help American Voter Fraud Act

[http://www.pardonmyenglish.com/archives/2005/10/the\\_2002\\_help\\_a.html](http://www.pardonmyenglish.com/archives/2005/10/the_2002_help_a.html)

VT

October 06, 2005

Want to vote by phone? Apparently, it is a possibility...

Americans may soon be able to use the telephone to vote in local elections, and could someday dial in their decision in national races, the WALL STREET JOURNAL reports on Thursday.

The 2002 Help America Vote Act, which was created to simplify the voting process following the debacle in Florida during the 2000 presidential election, helped fund the development of new voting systems.

Vermont is the first state to commit to phone-voting technology. By the November 2006 elections, all of the state's voters who are unable to mark their own paper ballots are slated to use a new telephone voting system. The Vote-by-Phone, initially will be used only in polling places – but there are plans to expand the system to voters' homes!

The irony here is that an action taken to curtail voter fraud will lead to provisions that will make it easier to commit voter fraud. I can hear the stories now, Democratic operatives will either be A) knocking on doors on Election Day and physically making the calls themselves (which would likely be prohibited); B) employee phone technicians to make calls on behalf of real voters, fooling the system to believe that they are indeed calling from the actual address; C) pay for phone numbers for non-existent or dead persons and voting for them D) all of the above and much, much more. I can see it now, every phone booth will become the residence of a "registered Democrat" who votes party line.

The sad thing is, this not far-fetched.

Posted by Aaron at October 6, 2005 12:32 PM

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----- Forwarded by Bryan Whitener/EAC/GOV on 10/06/2005 03:14 PM -----

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Friday, April 25, 2003

# 4 charged in Knott election Judge-executive, others allegedly paid for votes

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By Alan Maimon  
amaimon@courier-journal.com  
The Courier-Journal

Four Knott County men, including two-term Judge-Executive Donnie Newsome, were indicted yesterday on federal charges of vote-buying stemming from the troubled May 1998 primary election.



Donnie Newsome, shown in 1997, is the first Kentucky elected official in at least five years to be charged with buying votes.

Newsome, 52, and Willard Smith, 54, both of Hindman, and Keith Pigman, 45, of Garner were charged by a federal grand jury in London, Ky., with one count of conspiracy to pay voters to cast absentee ballots in the primary election in which Newsome was running for judge-executive.

Newsome, the first Kentucky elected official in at least five years to be indicted on votebuying charges, also is charged in two counts of the six-count indictment with paying and aiding the paying of between \$50 and \$100 to two voters in the primary. Smith is charged with four counts of paying voters.

Pigman is charged with two counts of paying voters and aiding the paying of voters.

In a separate indictment, Newton J. Johnson, 33, of Brinkley, is charged with four counts of paying voters in the 1998 primary. Johnson also was charged with one count of making false statements to the FBI about his involvement in paying voters and two counts of obstructing justice by urging two witnesses to lie to the grand jury investigating the vote-buying allegations.

Newsome, Smith and Pigman each face up to five years in prison and a \$250,000 fine if convicted. Johnson faces up to 10 years in prison and a \$250,000 fine if found guilty.

An arraignment date in U.S. District Court in Pikeville hasn't been scheduled.

Newsome, who defeated three-term incumbent Homer Sawyer in the May 1998 primary and won re-election last November, didn't return phone calls to his home yesterday.

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Reached by phone, Pigman said he wasn't aware of the indictment.

"I have no idea what's going on," he said. "I'm amazed."

A Newton J. Johnson of Brinkley also said he had heard nothing about the indictment.

Smith couldn't be reached for comment yesterday evening.

Assistant U.S. Attorney Thomas L. Self and Richard Pilger, a trial attorney with the U.S. Justice Department, are prosecuting the case. The FBI conducted the investigation.

The May 1998 primary election in Knott County drew widespread notoriety in 1999 after six county residents were charged in a federal indictment with conspiring to buy votes of students at Alice Lloyd College, a small private college in Pippa Passes.

It also attracted the interest of federal and state investigators because of the unusually high number of absentee ballots.

Later, state and federal authorities descended on Knott County amid allegations of election fraud. Five of the six people charged with conspiring to buy the college students' votes were convicted or pleaded guilty to federal charges.

So far this year, federal prosecutors have taken aim at alleged vote-buying, a practice that Greg Van Tatenhove, U.S. Attorney for Kentucky's Eastern District, said jeopardizes democracy. "Representative government is diminished when the worth of honest ballots is diluted by ballots bought by those who seek to corrupt the election process."

In March, a federal grand jury in Lexington charged nine people with conspiring to buy votes under the guise of paying people to transport voters to the polls in lawyer John Doug Hays' unsuccessful race last year for Pike County district judge. Hays, his wife, Brenda Hays, and lawyer and coal operator Ross Harris are among those facing charges.

All nine have pleaded innocent.

Last month in Knott County, six men were indicted on federal charges that they paid people to vote in the 1998 primary election.

Five of the six also are charged with lying to the FBI about alleged vote-buying.

The six are charged in five federal indictments returned by a federal grand jury in London. Indicted were Ronnie Neal Slone, 55, and Brady Warren Slone, 57, both of Pippa Passes; Phillip Slone, 53, and Jimmy Calhoun, 33,

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both of Hindman; Patrick Wayne Madden, 45, of Littcarr; and Jimmy Lee Conley, 33, of Lackey.

All six have entered innocent pleas.

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Saturday, August 16, 2003

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### Knott men acquitted of vote-buying charges Credibility of witnesses may have hurt case

By ROGER ALFORD  
Associated Press

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PIKEVILLE, Ky. — Two brothers were acquitted yesterday of charges that they bought votes in a primary election in Knott County five years ago.

A jury deliberated less than two hours before finding Brady Slone, 57, and Ronnie Slone, 55, both of Pippa Passes, innocent of the charges in U.S. District Court in Pikeville.

"This was a case of mind over matter," Ronnie Slone said. "The FBI knew in their minds that we were innocent, but it didn't matter. They brought scum in here to testify against us."

The key prosecution witnesses were three women, two of whom acknowledged in court that they were hooked on prescription drugs around the time of the 1998 primary election. Each testified that Ronnie Slone, an insurance agent, paid her \$100 to vote for certain candidates. They said Brady Slone, a retired public school principal, stood nearby when the payments were made.

Defense attorneys called a Knott County physician and a pastor as character witnesses who testified that the Slone brothers had unblemished reputations for integrity and truthfulness.

Ned Pillersdorf, attorney for Brady Slone, said he believes the lack of credibility of the

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prosecution's witnesses, coupled with the Slones' record of community service, led to the acquittal.

"Prosecutors shouldn't have selected this case, with the underwhelming credibility of the witnesses," Pillersdorf said. "There are plenty of unsavory characters that bear looking into. My client is a hero who was injured in combat. You don't try to convict a Vietnam veteran with shrapnel in his head on the testimony of noncredible witnesses."

Brady Slone received the Purple Heart for the injury he received in February 1967.

"This government sent me to war as a combat medic and destroyed my life, and now this government treats me like scum," said Brady Slone, who wept after the verdict was read. "I don't like it."

One of the prosecution witnesses, Monica Miller, a former Hindman resident who now lives in Cincinnati, testified that Ronnie Slone paid her for her vote while Brady Slone stood nearby. Prosecutors claimed Brady Slone was acting as a lookout.

Miller and her friends Ann Slone and Jana Slone, who may be distant relatives of the brothers, each testified that they went to the Knott County Courthouse together, voted, then drove to the outskirts of town where they were paid.

All three of the women needed the money, said federal prosecutor Richard C. Pilger from the U.S. Department of Justice in Washington.

"These women were exploited," Pilger said. "They were poor, hard-pressed women. The kind of people susceptible to selling their votes."

FBI Special Agent Tim Johnson said he contacted the three women as part of his investigation. He said they were "very reluctant" to answer his questions.

Johnson, who testified that he had interviewed about 175 people in his investigation, said the U.S. attorney's office had agreed to grant immunity to the women for the crime of selling their votes if they cooperated.

"They didn't want to be here," Pilger told jurors in the Pikeville courthouse. "They didn't want to get these guys in trouble. They had no reason to lie."

However, defense attorney Steve Owens, representing Ronnie Slone, said the women had changed their stories numerous times. He said they even acknowledged that their testimony in court differed from their original statements to the FBI.

The Slones became the second and third Knott County residents acquitted of vote buying charges in Eastern Kentucky since June.

On June 20, a federal jury found Jimmy Lee Conley, 33, of Lackey, innocent of buying votes in the same primary election.

Conley was the first of about 20 Eastern Kentuckians indicted this year on charges of election fraud to go to trial.

Two other people indicted in the Knott County probe pleaded guilty to vote fraud earlier this month. Phillip Slone, 53, of Hindman, and Newton J. Johnson, 40, of Brinkley, admitted paying voters \$50 to vote in the primary election.

Five other Knott Countians remain under indictment on federal vote fraud charges, stemming from the same primary election. All have entered innocent pleas.

And in Pike County, 10 people, including a former state senator and his wife, are under indictment on charges of vote fraud involving a race last year for district judge. They, too, have entered innocent pleas.

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# Election-fraud trial begins in Pikeville

## Knott County judge-executive is 1 of 2 charged

By ROGER ALFORD  
Associated Press

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PIKEVILLE, Ky. — Defense attorneys wasted no time yesterday attacking the credibility of witnesses who'll testify against Knott County Judge-Executive Donnie Newsome and a campaign worker in their election-fraud trial.

"You're not going to hear from one single credible witness that they are guilty," said Scott C. Cox, a Louisville attorney representing Newsome in the U.S. District Court trial in Pikeville.

Newsome, 52, and Willard Smith, 54, both of Hindman, are accused of buying votes in the 1998 Democratic primary.

Federal prosecutor Richard Pilger told jurors in his opening statement that at least one witness is unable to read, another has mental problems and another is a convicted felon. All were poor and easy prey for unscrupulous candidates, he said.

"We will prove to you that Donnie Newsome picked exactly that kind of people in anticipation of this day," Pilger said.

NEWSOME AND Smith were among several people charged after an FBI investigation into the 1998 primary. U.S. District Judge Danny Reeves said the trial is expected to take several days, perhaps extending into next week.

Pilger said authorities suspected something was amiss in the election when they saw large numbers of absentee votes being cast.

"This was a flag to the FBI," Pilger said. "This was an indication of vote buying."

Pilger and Assistant U.S. Attorney Tom Self, having failed to win convictions in two vote-fraud trials in Pikeville since June, asked that the trial be moved elsewhere.



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Self said he feared publicity and the political influence of the defendants could hurt the chances of a fair trial in Pikeville.

The judge also expressed concerns about pretrial publicity surrounding the case but opted to keep the trial in Pikeville.

In a trial last month, Brady Slone, 57, and Ronnie Slone, 55, both of Pippa Passes, were found innocent of buying votes in the same primary. They became the second and third Knott County residents acquitted of vote-buying charges. In June a federal jury found Jimmy Lee Conley, 33, of Lackey, innocent of buying votes.

Three other people indicted in the Knott County investigation have pleaded guilty to buying votes. Phillip Slone, 53, of Hindman; Newton J. Johnson, 40, of Brinkley; and Jimmy Calhoun, 33, of Hindman, admitted paying voters \$50 each.

The trial of the remaining defendant, Patrick Wayne "Buck" Madden, 45, of Littcarr, is scheduled for Oct. 7.

PILGER TOLD jurors in his opening remarks that Newsome, a former state representative, wanted to be boss of Knott County and bought votes and conspired to buy votes to achieve that position.

"Every citizen is entitled to participate in voting without the taint of vote buying," he said.

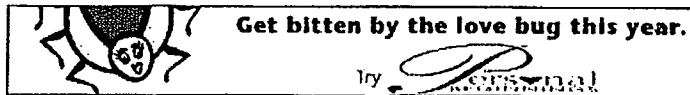
Cox said Newsome won the election by working hard. "His campaign strategy was to wear the leather off the soles of three or four pairs of shoes."

The same strategy, Cox said, won Newsome election to two terms in the legislature.

"Believe me," Cox told the jury, "there are two sides to this story."

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Posted on Tue, Feb. 03, 2004

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## Knott man gets 20 months for vote fraud

HE WAS ONE OF 12 PEOPLE CONVICTED IN VOTE-BUYING SCHEME

ASSOCIATED PRESS

**PIKEVILLE** - A Knott County man has been sentenced to 20 months in prison for buying votes in the 1998 primary election.

Patrick Wayne Madden, 46, of Littcarr, will serve two years probation when he is released.

U.S. District Judge David Bunning imposed the sentence yesterday, saying he hopes the punishment will deter others from buying votes in eastern Kentucky.

Madden, who was not a candidate in the election, pleaded guilty. He was among a group of Knott County residents charged in an FBI crackdown on election fraud that netted 12 convictions.

Knott County Judge-Executive Donnie Newsome, a former state representative, was among those caught in the crackdown. He was convicted in federal court Oct. 1 of one count of conspiracy to buy votes and two counts of buying votes.

Newsome's sentencing is scheduled for March 16. He faces three to 15 years in prison.

Another Knott County man, Willard Smith, was convicted in the same trial of one count of conspiracy to buy votes and four counts of buying votes. Smith faces five to 25 years in prison at his sentencing on Feb. 17.

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WE

## Voting fraud not a problem in Madison

Phil Brinkman Wisconsin State Journal  
May 10, 2005

John Hill really does exist. So do Katie Katz, Donald Schamun, James Kuehl, Janet Griesel, Sandra Angell, John Amundson and Deb Spees.

Brian Stoll is out there, along with Daniel Jay Lee and David Cimino. Angela Franzke moved; so did Nathan Greenawalt, Scott Lueck, Eric Sherman and Paul Sonntag. But they're real people.

In fact, if you took the time, you'd likely find the vast majority - if not all - of those once thought to be Election Day phantoms in Madison are living, breathing voters.

Authorities continue to investigate voting irregularities in Milwaukee, including more than 100 cases of suspected double voting.

But in Madison, where 1,194 address verification cards sent to voters who registered on Election Day in November were returned as nondeliverable, investigators now say only 16 may be problematic.

"The vast majority of them - almost all of them - on their face appear to be someone who moved between voting day and the time when these were mailed out," Dane County District Attorney Brian Blanchard said.

Most of the others either wrote down the wrong ZIP code on their registration forms, forgot to include their apartment numbers in their address or inadvertently wrote down an old address. The post office likely could find them, but election rules require the cards be returned if the address is incorrect or incomplete.

"It doesn't make me feel good," said John Hill, 59, an Army veteran and longtime Madison resident whose voter registration card was sent back to the Madison city clerk because he wrote his ZIP code as 53704 instead of 53705. "I know I didn't cheat, and I know it was all a big mistake. People just make too big a deal of the little things."

**Innocent mistakes** Such innocent mistakes, which happened thousands of times around the state, have tended to amplify the far more serious - but much smaller number - of likely fraudulent votes such as those announced Tuesday in Milwaukee. Identification advocates regularly cite the number of returned registration cards as evidence Wisconsin needs to require voters to show photo identification at the polls.

Opponents point out such a requirement would do little to stop most of the problems that have been identified, such as people writing down the

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wrong address or felons voting, and say it could disenfranchise some elderly or poor voters.

Supporters note the current system, in which registered voters need show no identification and new voters need only a utility bill or another registered voter to vouch for them, invites abuse.

The GOP-led Legislature recently passed a bill requiring a photo ID to vote, but Democratic Gov. Jim Doyle vetoed it.

A hearing on a proposed state constitutional amendment requiring such identification (AJR 36) is planned for 10 a.m. Thursday in Room 300 Northeast of the state Capitol.

At first glance, many of the verification cards that were returned suggested possible voter fraud: The addresses didn't exist, or the person on the card didn't live there.

One card, filled out by a John Amundson, gave an address of "6 S. Madison," not an actual residence. But Amundson is very real. The 45-year-old information technology manager actually lives at 6 S. Yellowstone Drive.

"Sounds like I spaced out the 'Yellowstone,'" Amundson said. "It certainly sounds like the kind of thing I could do."

A letter carrier couldn't find Janet Griesel at 710 Wheeler Road. That's because Griesel moved about two years ago to 710 Malvern Hill Drive from 1630 Wheeler Road. Her card mixed the two, creating an address that doesn't exist.

"My husband probably filled it out for me because I have a vision problem," Griesel said. "He was in a hurry to write his and mine, and I bet that's what he did. Unbelievable."

Katheryn Katz put down the address of her sorority house at 103 Langdon St. when she registered to vote Nov. 2 in her first presidential election. The city clerk sought to confirm her address in January, but by then she had moved to Seville, Spain, where the 21-year-old UW-Madison junior is studying Spanish politics and history.

Sandra Angell moved to her new house five years ago, but for reasons she can't explain, she wrote down her old address on Starker Avenue when she went to vote.

**Cheating can be risky** Kevin Kennedy, executive director of the state Elections Board, wasn't surprised at the low number of potential fraud cases in Madison. Defrauding the current system is easy but chancy, and the payoff of throwing a few votes toward one candidate probably isn't worth the risk of 4 years in prison, he said.

Allegations of massive fraud, such as one person vouching for a busload of potential voters, are probably apocryphal, Kennedy said. Something like that would make an impression on poll workers, who haven't reported any such incidents, he said.

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Voters can cheat the system. They can, for example, claim to be someone else. But that can be risky, Kennedy said, since it depends on the cheater knowing that the other person hasn't voted yet and that the poll worker doesn't know the person whose identity is being used.

To register as a fictional voter, the person would need to forge documents, such as utility bills, used to verify the person's address. Beginning in 2006, federal law also will require voters to list their driver's license number or, if they don't have a driver's license, the last four digits of their Social Security number.

State Rep. Jeff Stone, R- Greendale, the lead sponsor of efforts in the Assembly to require photo ID at the polls, said the numbers from Madison suggest "a degree of accuracy in the way the system functioned" unlike in Milwaukee.

But he maintained photo ID would improve the system further by allowing poll workers to make a positive identification of the voter, even if the address is outdated, incorrect or fraudulent.

"I think that's something that would improve the potential for pursuing charges against someone who voted improperly," Stone said.

**Charges unlikely** In Madison, at least, the odds of such charges look exceedingly slim. If someone wanted to forge an identity and vote fraudulently, finding that person is probably next to impossible, Blanchard said.

Then, too, explanations for the 16 cards investigators have pulled out for further inquiry may prove to be as benign as the other 1,178.

On Tuesday, the Wisconsin State Journal found one of those voters, Brian Stoll. He and his wife live where they said they lived on their registration card, at 9921 Soaring Sky Run. But, while the property was recently annexed by Madison, the post office still considers it a Verona address and returned the card.

Stoll, 38, said he's used to such confusion over his address and was willing to overlook his brief tenure as a criminal suspect.

"As long as I didn't end up in jail and I can explain the circumstances, I guess it's OK," he said.

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The authors of the study conclude "It would be difficult to imagine a jurisdiction adopting a new technology for voting if it were not satisfied that the proposed innovation was at least as good as the present system on every one of the first ten criteria, and better than the present system on the last seven."

The study urges caution but identified telephone, kiosk, and Internet as three options sufficiently evolved to support testing in a fully functional pilot. Of these, the study said telephone offers the potential for the most significant impact on the largest base of Canadians.

Legislation recently passed by parliament and awaiting royal assent would authorize studies of newer technology and voting.

### STUDENT ABSENTEE VOTES

An elementary school physical education teacher and two other Knott County, Ky. residents were convicted April 19 in federal court in Pikesville, Ky. for conspiring to buy absentee ballots from 12 students who attend a small private college. The twelve person federal jury, which deliberated for seven hours over a two-day period, failed to agree on a verdict for two other defendants, one of whom was the brother of the county attorney on the ballot. These two defendants face a retrial in June.

The jury convicted Caney Creek Elementary School physical education teacher Phillip D. Sparkman, of twelve counts of vote fraud and of one count of lying to the FBI. Lola Jean Stone, a sister of one of the candidates on the ballot, was convicted of seven counts and of lying to the FBI. Charlie Maggard was found guilty of three counts of vote fraud. The maximum federal penalty for each offense is five years in prison and a \$250,000 fine. Sentencing will occur later this summer.

After the Alice Lloyd College students were granted immunity, they testified that they were paid \$30 to cast their ballots in 1998 for a slate of local candidates. According to student testimony, they received their payment for votes from Stone after they went to her store where they wore "I Vote" stickers and purchased a peach-flavored "Mr. Fizz" soft drink.

The trial began April 4 but was suspended for a week during Pikesville "Hillbilly Days" celebration. Although all vote buying charges were related to local offices, the federal prosecutors had jurisdiction because federal candidates were on the same ballot.

David Randall Gayheart, the nephew of the County Clerk, was named in a separate indictment for seven counts of paying or offering to pay college students to vote for his uncle, lying to the FBI, and three counts of asking others to lie to the FBI. Gayheart pleaded guilty January 3 to buying votes and co-operated with prosecutors. He is awaiting sentencing.

Kentucky Secretary of State John Y. Brown instituted a "Fraud Busters" program in 1996 to curb vote buying abuses. The state legislature authorized \$10,000 to finance the program which offers a reward of \$1,000 for information leading to a felony indictment for vote fraud. State officials said that the Pikesville convictions, however, were based on complaints made to the FBI, not to state officials.

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**CHICAGO SUN-TIMES**[www.suntimes.com](http://www.suntimes.com)[Back to regular view](#)<http://www.suntimes.com/output/news/cst-nws-stlouis30.html>[Print this page](#)MO?  
SL?**5 in E. St. Louis convicted of vote fraud**

June 30, 2005

BY JIM SUHR

EAST ST. LOUIS, Ill. -- A federal jury Wednesday convicted the head of this city's Democratic Party and four others of scheming to buy votes with cash, cigarettes and liquor last November to try to get key Democrats elected.

Jurors in the monthlong trial deliberated more than five hours before convicting local Democratic Party chairman Charles Powell Jr., 61, and Kelvin Ellis, 55, the city's former director of regulatory affairs, of felony conspiracy to commit vote fraud. Also convicted were Democratic precinct committee members Sheila Thomas, 31, and Jesse Lewis, 56, and City Hall worker Yvette Johnson, 46.

Ellis, Thomas, Lewis and Johnson also were convicted of one count apiece of election fraud for allegedly paying at least one person to vote -- or offering to do so. Powell was never charged with that count.

Jurors set aside defense claims that the government's case was flimsy because of unreliable witnesses whose testimony often contradicted each other and, at times, was recanted.

**Not much direct evidence**

"I respect the jury, but I am disappointed," Ellis' attorney, John O'Gara, said after the verdicts. He said the defense would consider asking for a new trial.

A date for sentencing was not immediately set.

"We'll take it one step at a time in terms of where we go from here," said Johnson's attorney, Pearson Bush, who declined to elaborate.

Messages left with attorneys for Powell and Thomas were not immediately returned. Voice mail for Lewis' attorney was full.

Prosecutors provided little evidence directly linking the defendants to the alleged vote-buying, often relying on secretly recorded audiotapes in which they say those accused could be heard talking about paying \$5 per vote in the Nov. 2 election -- and whether that amount would be enough.

A federal prosecutor in the case referred calls to his boss, U.S. Attorney Ron Tenpas, who did not immediately return messages left at his office.

**Witnesses called liars**

Prosecutors alleged that money flowed from the Belleville-based St. Clair County Democrats to their East St. Louis counterparts in a bid to elect certain Democratic candidates, including Mark Kern as St. Clair County Board chairman.

Kern, who narrowly won the race, has denied the allegations and has not been charged with any wrongdoing.

Powell lost his re-election bid to the City Council in April after his arrest.

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State records showed that tens of thousands of dollars were transferred from the county Democrats to the committeemen days

<http://www.suntimes.com/cgi-bin/print.cgi>

6/30/2005

before the Nov. 2 election. Party leaders said it was for legitimate expenses, including rides to the polls for people without cars.

Defense attorneys called the audiotapes -- the cornerstone of the government's case -- meaningless entrapments by opportunistic informants intent on seizing power for themselves. Defense attorneys called the prosecution's key witnesses liars.

"I would say jurors looked at these tapes and listened to them, and I'm guessing they are using the interpretations these very faulty witnesses gave them to reach their conclusion," O'Gara said after the verdicts. "I would not have trusted the government's presentation."

AP

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### Witnesses disagree in vote fraud case

By Michael Shaw  
Of the Post-Dispatch  
Thursday, Jun. 16 2005

The government's witnesses in the East St. Louis vote fraud trial don't agree on one of the most surprising aspects of the testimony so far: whether St. Clair County Board Chairman Mark Kern knew vote buying was taking place in East St. Louis during the November election.

The first witness testified two weeks ago that during a telephone conference call in October, she heard prominent Democrat Kelvin Ellis solicit funds from Kern, then a candidate for the job, to pay reluctant voters.

Sandra Stith, a Democrat worker during the Nov. 2 election who already has pleaded guilty to buying votes, is the only other government witness to that call.

She took the stand Thursday and said she remembered the Oct. 21 call. But she said she didn't remember the alleged discussion about more money being needed to swing the election in Kern's favor because some residents perceived him as racist.

"Do you recall any comments about money during that conversation?" Assistant U.S. Attorney Mike Carr asked her.

"No," she replied.

Carr ended his questioning of Stith soon after that exchange.

Five East St. Louis Democratic Party workers are on trial in federal court at East St. Louis, accused of a conspiracy to buy votes in the Nov. 2 election to get Kern and other prominent party members elected. Defendants include Ellis and city party Chairman Charles Powell Jr.

Kern, who would have lost the race without the East St. Louis turnout, has not been charged and has denied any wrongdoing.

Other controversial developments on Thursday led U.S. District Judge G. Patrick Murphy to send the jury home for the day to allow lawyers to prepare for today's proceedings.

Today, prosecutors are expected to present witnesses who will testify that Powell directly paid residents to vote, something his lawyer, Bruce Cook, said left him blindsided. Powell is only charged with leading a conspiracy to buy votes, not with purchasing the votes themselves.

Murphy, the judge, said he was surprised, too, but ruled the evidence was admissible. One witness, identified Thursday as Douglas M. Alexander, 45, is expected to testify Powell paid him \$10 to vote.

Two others, Stephen Young and his wife, Terrell Crow-Young, had been expected to testify that Powell's associate paid them to vote Nov. 2, according to a prosecutor's document filed in the case. But they won't be allowed to testify because they accidentally attended a portion of the trial Thursday morning. Any witness is supposed to be barred from hearing another's testimony, so Murphy excluded them.

Authorities have interviewed at least one other man who said that Powell's associate paid him to vote, according to documents. Cook and other lawyers, who previously had questioned the lack of testimony from actual voters, said Thursday that they wanted extra time to prepare a defense in light of these witnesses.

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In another twist, Murphy and the prosecutor, Carr, argued about whether the judge had said in front of the jury that Thursday's testimony by Stith was "damaging" to the government's case.

Carr claimed it happened when jurors were present. Murphy claimed he never said "damaging" in front of the jury. A transcript of the proceedings shows the judge saying "I believe that the witness gave damaging testimony to the government" in front of the jury.

**Reporter Michael Shaw:**  
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Jackson, Mississippi

March 28, 2004

## 7 hit in voter fraud case

MS

- Defeated Tippah County sheriff's candidate among persons named

The Associated Press

RIPLEY — Seven people have been charged with voter fraud in Tippah County, according to the attorney general's office.

While specific individuals were named in the indictments as the candidates for which votes were allegedly bought, Randall L. Wilbanks, a defeated candidate for Tippah County sheriff, was the only one named as a defendant.

Attorney General Jim Hood, whose office investigated the case, said the document must contain those names.

Named in three separate indictments were Wilbanks, 60; Joe Daniel Barnes, 52; and James D. Johnson, 66, all of Ripley; and Melba Sue Selmer, age and address unavailable. Each is charged with one count of conspiracy to commit voter fraud and 16 counts of voter fraud.

In a second indictment, Christopher R. Mathis, 40, of Tiplersville, Billy Gene Barnes, 49, of Walnut, were indicted on three counts of bribery.

In the third indictment, Roy Lee Richardson, 40, of Corinth, is charged with one count of attempting to bribe an elector and three counts of bribery for allegedly paying four individuals \$15 each to vote for three candidates.

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NY

## Free beer if you register to vote

Joseph Spector and Enid Arbelo  
Staff Writers

(June 18, 2004) — Here's a way to get young people registered to vote: Give them free beer.

That's the plan at today's East End Festival. Monroe County Democrats have teamed up with High Falls Brewery to offer two free 2-ounce beers to those who register to vote at the festival.

Then the new voter can go into a real voting booth and pick the brew they liked the most. The promotion is called "Register Your Taste."

The goal is to encourage people older than 21 to register to vote and to simulate the experience of voting. But alcohol treatment counselors fizzled on the idea, saying organizers shouldn't link drinking with the civic duty of voting.

"I think there are other ways to motivate people to vote other than give them alcohol," said Elaine Milton, director of the chemical dependency clinic at the Family Service of Rochester Inc.

Molly Clifford, head of the Monroe County Democrats, stressed that the event is not aimed at encouraging alcohol consumption and that the samples are small.

The initiative, backed by High Falls CEO Tom Hubbard and Moe Alaimo, president of the East End Business District, will also take place at two other East End festivals later this summer and at two Red Wings games.

The booth will be open from 6 to 8 tonight at Alaimo's store, Havana Moe's, 200 East Ave.

### Voting for Beer

Question: What do you think about the plan to register people over age 21 to vote with free beer?

- It's a good idea to encourage the democratic process.
- This is a disgrace because it encourages the consumption of alcohol.
- This is a cheap ploy to get votes.
- This is my type of political party!
- How many times can I register?

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"It's just a fun way to get young people interested in voting," Clifford said.

The festival is a great place to promote voting because of the captive audience, said Christopher Burns, co-founder of the Rochester Young Professionals.

"Young people like to drink and politics is not something they usually think about," said Burns, 29.

"I hope people won't be inebriated when they vote, but it seems like a fun way to get people involved in the voting process."

Participants will vote between High Falls' two new beers, Dundee's Amber Lager and Pale Ale, both to be introduced this fall. Hubbard said the event is a good marketing opportunity for the local company and a way to help a good cause. About 20,000 people, largely those in their 20s, attend each East End festival.

Clifford said she and Hubbard developed the idea, a nonpartisan affair, because locally and nationally it's difficult to get young people to vote.

Statistics show that the 18-to-24 age group has the lowest percentage of registered voters and number of people who come to the polls.

Since 1972, the young voter participation rate has declined by about 13 percent overall — the largest drop of any age group, according to the National Association of Secretaries of State. In Monroe County, less than 8 percent of registered voters are ages 18 to 24, also the lowest of any age group.

Jennifer Kunselman, 27, of Rochester said festival attendees could benefit from being able to register to vote there. Yet she said having the option at a Red Wings game would be even better.

"I think it's important to target a younger audience," Kunselman said. "But there is a whole other population that won't be frequenting the festival."

David Mammano, president of the local chapter of the Young Entrepreneurs Organization, said the idea is good because it promotes voting, but he doubts it will help. He said people will vote if they want to, not because of free beers.

"Maybe they will have better luck if they have beer on Election Day."

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# The Monitor

<http://www.themonitor.com/>



TX

## Defendant in voting scandal to tell side

August 20, 2005  
Marc B. Geller  
*The Monitor*

McALLEN — One of the people at the center of a purported votes-for-money scheme in the McAllen city elections expects to testify before the grand jury next week.

"I contacted (assistant criminal district attorney) Paul Tarlow and I said that I wanted to go before the grand jury; I wanted to tell them my side of the story," said Jose "Joey" Lopez, 22, of McAllen, on Friday. "I don't know if anybody is going to hear me, but I'm going to be able to go over there and tell them what truly happened."

The grand jury is investigating allegations that politiqueras, or paid political operatives, violated laws governing early voting via mail.

Hidalgo County District Attorney Rene Guerra also has said grand jurors would be reviewing surveillance recordings in which Lopez is heard offering Othal Brand Jr. 400 mail-in ballots in exchange for \$4,000. Brand is the son of former mayor Othal Brand Sr., and manager of the elder Brand's recent mayoral campaign.

Brand Jr. has said he called the FBI immediately after his first meeting with Lopez and was referred to the Texas Rangers. Sgt. Israel Pacheco, a Texas Ranger who conducted his own investigation, has said that he directed Brand to make the recordings.

Grand jurors are likely to hear a much different account of what happened from Lopez than the account they heard from Brand Jr. in earlier testimony.

Lopez acknowledges that he accepted money from Brand Jr., but maintains that he never had access to any ballots and denies he had any intention of actually delivering any. Lopez also asserts that Brand Sr. initiated the negotiations for the mail-in ballots and that Brand Jr. contacted law enforcement only after Lopez failed to deliver them.

"This guy wanted to get his dad elected by all means necessary, including getting a kid like me to try to get him votes," Lopez said. "I couldn't do it for him, so I kept on making excuses, and he kept on giving me money."

Brand Jr. disputes Lopez's account and doesn't think the grand jury will buy it.

"I've got nothing to hide," the younger Brand said. "I have no worries about anything that he would want to say to them."

Brand Jr. declined to discuss his own testimony before the grand jury, citing instructions from the District Attorney's Office.

State law prohibits disclosure of the proceedings of a grand jury.

"I cannot tell you who is or who is not going to testify before the grand jury," Tarlow, the assistant criminal DA, said. "What goes on in the grand jury room is secret, as a matter of law."

Guerra, the DA, said Wednesday that the grand jury continues to investigate the McAllen election scandal and could issue indictments as early as next week.

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Brand Jr. said he was optimistic the outcome will help bring integrity to future elections in the Rio Grande Valley.

"I'm just hoping that the grand jury has some impact on cleaning up the voting system," he said. "I certainly hope that will have some impact in deterring anybody attempting to do any voter fraud of any type in any election."

His optimism is guarded, however, in the event the grand jury indicts voters but not politiqueras.

"It will not deter politiqueras at all," he said. "If they think they're going to curb the activity by going after voters in the 75- to 100-year range, that's not going to accomplish anything."

Earlier this week, the grand jury investigating the McAllen elections indicted two women for voting twice in the San Juan city election. Maria Louisa Rodriguez and her daughter of the same name were charged with illegal voting, a third-degree felony that carries a two- to 10-year prison sentence and a maximum \$10,000 fine.

The politiqueras who brought the mother and daughter to vote for a second time on Election Day were identified in an internal city memorandum, but Guerra said neither of the women — Cindy Rodriguez, wife of City Commissioner Bobby Rodriguez, and Vicki Loreda, wife of ex-mayor Robert Loreda — would face charges.

Lopez, for his part, said he's prepared to face the consequences of accepting more than \$1,000 from Brand Jr. and breaching their verbal agreement, but added that he plans to fight any charges that he violated election laws.

"I feel like I'm part victim," he said. "It's like I'm being accused of something that I didn't do. I should have never gotten into it or even messed around with it, but I felt that I needed the cash. ..."

"I just want to make sure that they get my side of the story and they get what I feel is the true side of the story."

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Marc B. Geller covers McAllen and general assignments for The Monitor. You can reach him at (956) 683-4445.

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## DA INVESTIGATES ALLEGED BRIBES FOR EARLY VOTES

TX

STAFF & WIRE REPORTS

September 09, 2003

LONGVIEW - Gregg County District Attorney William Jennings is investigating a Gregg County-area employer who allegedly gave a handful of \$10 Neal McCoy concert tickets to workers who cast early ballots in the constitutional amendments election.

Jennings said he is choosing not to identify the employer yet.

He said he began his investigation Friday afternoon after he was contacted by the county elections administrator who had received phone calls from media.

"An employer in Gregg County had given concert tickets in exchange for people voting," he said. "I've got no indication that there was an exchange of a ticket to vote a certain way. Obviously, there would be no way an employer would know how that person voted under our system."

He said that a half a dozen to two dozen people received tickets to the concert, performed last week.

"The concern is not with the voter. It is whether the employer went too far in encouraging the employee to vote," Jennings said.

The most serious allegation possible in this incident is a state bribery law, that, if violated, is a second-degree felony, punishable by two to 20 years in prison, Jennings said.

"I'm not sure that's the offense that's been committed just yet," he said. "I'll get the facts and apply the facts to the law and see where we go from there."

There may be other election code issues he will also look at, not quite as serious as the state bribery law, he said.

The high-profile amendment on the ballot is Proposition 12, which would ratify limits on non-economic damages in medical malpractice lawsuits and clear the way for future Legislatures to set similar caps in other civil suits as well.

There are 22 proposed amendments on Saturday's election ballot. Early voting ended Tuesday.

Doctors, hospitals and other health care providers are waging a strong campaign for Prop. 12, while plaintiffs' lawyers and some consumer groups are fighting it.

The proposal has attracted a larger-than-normal early voting turnout in Gregg County for a constitutional amendments election, the county's elections administrator, Hattie Owen, told the Houston Chronicle in Tuesday's editions.

Meanwhile, Kathy Allbright, a paralegal at a Longview law firm, said she was puzzled when on the

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second day of early voting she went to cast her ballot at the Gregg County courthouse and was asked by an elections official if she were "legal or medical."

"She (the elections official) said the medical people were asking for receipts showing that they had voted because they were getting bonuses," Albright said.

But Owen said rumors that health-care providers had offered their employees bonuses for voting were unsubstantiated.

Jennings also said in his investigation he had not found any of these other rumors to be substantiated.

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**Appy voting fraud claims probed**

The Post

May 11, 2005

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Virginia State Police are investigating allegations of voting fraud during last year's Appalachia town council election, Wise County Commonwealth's Attorney Chad Dotson confirmed Monday.

State police are looking at claims that supporters of an unidentified council candidate offered food, cigarettes and liquor to residents of the Inman Village public housing complex in exchange for letting the supporters fill out their absentee voting ballots, according to a story in Sunday's Roanoke Times.

Voters in the May 2004 election returned incumbent Councilman Ben Cooper to office and chose newcomers Eddie Gollaway and Owen "Andy" Sharrett III for the three open seats on the five-member council.

Cooper, a former mayor and acting town manager, led the polling with 351 votes, followed by Gollaway with 340 and Sharrett with 312.

Falling short were longtime councilman and current Mayor Gary Bush, with 244 votes; incumbent Rick Bowman with 221 votes; and former councilman Debbie Bouton with 212 votes. Also, Ben Surber received 28 votes despite having announced that he dropped out of the race.

The Roanoke Times story reported that of 585 people who voted, 108 cast absentee ballots - an absentee rate of 18 percent, compared with a usual statewide rate of about 5 percent.

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The story quotes three Inman Village residents as confirming their absentee ballots were filled out by someone other than themselves. The Roanoke Times did not identify the candidate or the candidate's supporters who allegedly bribed the residents, because so far no charges have been filed in the investigation.



Dotson Monday said the investigation is ongoing, but he hopes to receive a state police report in about two weeks. At that time, he said, he will determine if anything in the report merits the filing of criminal charges.

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Dotson declined to discuss details of the investigation, but acknowledged he's heard the Inman Village allegations detailed in the Sunday article.

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# FBI's Sham Candidate Crawled Under W.Va.'s Political Rock

By Michael E. Ruane  
Washington Post Staff Writer  
Friday, December 2, 2005; A01

The three men were sitting in a car outside a rural elementary school in West Virginia when the candidate handed over \$2,000 in cash and said, "Buy all the votes you can."

In the hamlets and hollows of Logan County, where political shenanigans are legendary and it's said that a vote can be bought for a pint of whiskey or a \$10 bill, some say there was nothing extraordinary about the transaction.

Here's what made it unusual: Although Thomas E. Esposito was on the ballot as a candidate for the state House of Delegates, he wasn't really running for office.

The small-town lawyer and former mayor was just bait. And when the FBI lowered him into the murky waters of southern West Virginia politics last year, it dangled him like a shiny lure.

The whole affair landed yesterday in a Charleston courtroom, where a defense attorney cried foul, accusing the government of "outrageous" conduct and of violating the sanctity of the election process. He said the charade robbed 2,175 citizens who voted for Esposito -- unaware he wasn't for real -- of a constitutional right.

But a federal judge sided with the government, ruling after a 30-minute hearing that corruption in Logan County had been endemic "for longer than living memory" and that the bogus election campaign might have been the only way to root it out.

In Logan County, which is about an hour south and a world removed from Charleston, there are people who agree. "This stuff has been going on since I was a kid," Kenneth McCoy, 54, a disabled miner, said this week. "They had to come up with some way to stop it. Personally, I have no problem with it."

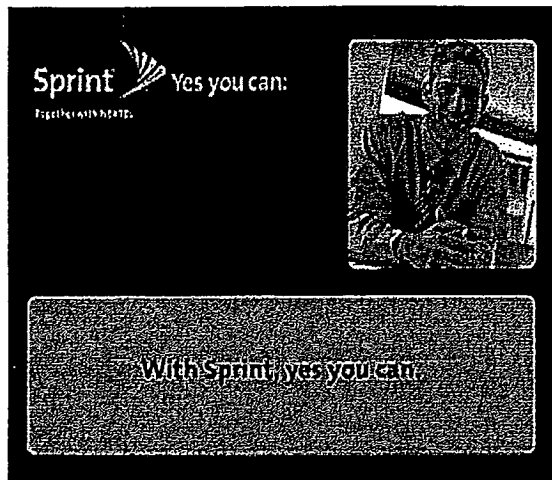
Political corruption in southern West Virginia goes back generations, residents and observers say.

"Federal authorities have been intervening in southern West Virginia for 80 years, at least," said Topper Sherwood, co-author of a 1994 book on longtime Logan County political chieftain Raymond Chafin. "More often than not, their role is to come in and remove power from those who have acquired it illegally."

Moss Burgess, 62, a retired Logan County high school chemistry teacher who has run unsuccessfully for local office, said: "I'm glad that somebody's trying to clean up the system in this county. Most people, they've more or less accepted it as common."

U.S. District Judge David A. Faber, chief judge for the Southern District of West Virginia, asserted in yesterday's ruling: "It has been nearly impossible to prosecute corruption in Logan County because persons with knowledge of it are reluctant to testify against others in their community."

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The current case began in 2003, when Esposito, a lawyer who had been mayor of the City of Logan for 16 years, entered a plea agreement with the government in a corruption case, according to court papers. He had been accused of paying the \$6,500 bar tab of a local magistrate for reasons not specified and then paying the magistrate to keep quiet about the arrangement. The magistrate was later indicted on an extortion charge.

Under the plea agreement, Esposito began helping the Justice Department in its investigation of county political corruption, which the department described as "commonplace and widespread."

Assistant U.S. Attorney R. Booth Goodwin II, in a court filing last month, said that as Esposito met under cover with people about vote buying in the run-up to the 2004 primaries, investigators concluded that a campaign sting could provide a "virtual treasure trove of evidence."

"Without that step, it was feared, the undercover operation would dissolve, and a valuable opportunity to catch a number of persons in the act . . . would be lost," Goodwin wrote. So the government had Esposito run. He entered the race Jan. 30, 2004, filing the appropriate papers with the West Virginia secretary of state. He was one of 10 Democratic candidates for four seats in House District 19, which includes Logan County.

"He had signs; he had stickers; he showed up at campaign events," said Chris Stratton, a reporter for the Logan Banner newspaper. "All that stuff was for show. It was there to make him look like a legitimate candidate."

Gregory J. Campbell, the attorney for Perry French Harvey Jr., 56, the defendant in the case, said: "The government knew that all this was false. [Esposito] was bait. Nothing more, nothing less. They tossed him out there, and they were seeing who'd come packing. And he was live bait. He was out there, and he was active."

According to court papers, on April 12, 2004, Esposito met with Harvey, a retired coal miner, and another man, Ernie Ray Mangus, at a political rally at the elementary school. They sat in Esposito's car, and Esposito gave Mangus the \$2,000. Mangus, who Campbell said has been granted government immunity, gave half the money to Harvey.

"The other guy gives my guy 1,000 bucks, and that was as far as it goes," Campbell said in a telephone interview Tuesday. "The other guy has been given immunity and will testify that my client knew that the money was to buy votes. . . . [Harvey] was told by the guy that had the money, 'Esposito gave me this and said buy all the votes you can.' My guy said, 'I ain't buying any votes,' and didn't."

Harvey, who voted for Esposito, was indicted Aug. 17 on one count of conspiracy to buy votes. He is scheduled to go on trial Dec. 14. Yesterday's ruling was on his attorney's October motion to have the charges dismissed. Esposito, reached at his law office in Logan County, declined to comment yesterday.

The FBI withdrew Esposito from the race two days after the meeting with Harvey and Mangus, and the Justice Department has said it took great pains to alert the public by way of the media. But his name remained on the ballot, and on primary day -- May 11, 2004 -- he got more than 2,000 votes, placing last in the field.

"By placing a false candidate in the election, a sham candidate, one [the government] knew could not take office, every vote that was cast for Esposito was a vote that an honest voter could have cast for an honest candidate," Campbell wrote in his motion to have the charges dismissed.

But Goodwin, the government attorney, countered in a filing that the decision to have Esposito run was approved by his office, the local FBI special agent in charge and the agency's Criminal Undercover Operations Review Committee in Washington, whose approval is required for all sensitive FBI undercover operations.

"Esposito did not engage in any unlawful conduct by becoming a candidate for the House of Delegates," Goodwin wrote. "Rather, his candidacy merely provided the stage on which defendant acted."

"The conduct of the United States in carrying out the undercover investigation was necessary and proper to root out

FBI's Sham Candidate Crawled Under W.Va.'s Political Rock  
systemic corruption," he wrote.

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Judge Faber noted yesterday that previous rulings have held that for a government investigative action to be improper it "must be so outrageous as to shock the conscience of the court."

"Here, in looking at the totality of the circumstances," he wrote, "the court's conscience is not shocked in the slightest."

During the hearing, Campbell said, the judge asked him: What else could the Justice Department have done?

"Not violate the constitutional rights of the voters of Logan County," he said he replied.

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## Ky. Jury Convicts 2 Men of Election Fraud

Ky. Jury Convicts 2 Men of Election Fraud in 2002 Races; Both Men Face About 2 Years in Prison

*The Associated Press*

LONDON, Ky. Sept. 16, 2004 — A Kentucky businessman was found guilty Thursday of election fraud for orchestrating a scheme to buy votes from impoverished mountain residents in two races in 2002.

The jury deliberated about four hours before returning the verdict against Ross Harris, a Pikeville coal operator whom prosecutors portrayed as the kingpin of the election fraud conspiracy. An associate was also convicted, and both men face about two years in prison.

The verdicts came after a trial in which various witnesses told of voters gathering in a church parking lot in an Appalachian county to collect \$10 bills after leaving the polls in the 2002 election. Others testified about large contributions to some candidates before the election to be used to buy votes.

In closing arguments Wednesday, federal prosecutor Ken Taylor described Harris as a behind-the-scenes political player who "secretly funds campaigns with illegal contributions."

Defense attorney Larry Mackey said the depiction was false. He said his client was being treated for life-threatening cancer during the period in question and would not have taken time from his hospital bed to help buy votes in the elections.

"We appreciate the jury's attention throughout the trial, but at the end of the day we're disappointed with the verdict," Mackey said, who vowed to appeal.

Harris was convicted on one count of conspiracy to commit mail fraud and to buy votes, three counts of mail fraud and one count of structuring withdrawals from a bank account to avoid federal reporting requirements.

Glen Turner, an executive in Harris' mining company, was convicted of conspiracy to commit mail fraud and two counts of mail fraud. The mail fraud counts involve the sending of bogus campaign finance reports to the state.

Prosecutors claimed Harris illegally contributed some \$40,000 to a former state senator's unsuccessful judicial race, and that Harris and Turner gave an additional \$25,000 to the re-election campaign of a judge. They said the money was used in a scheme disguised as a "get out the vote" effort.

The two men showed no reaction as the verdict was read. Both men declined to comment to reporters afterward.

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Posted on Thu, Sep. 02, 2004

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## Imprisoned judge-executive testifies in election fraud trial

ROGER ALFORD  
Associated Press

**LONDON, Ky.** - Imprisoned Knott County Judge-Executive Donnie Newsome testified Thursday that he received \$25,000 in cash from two eastern Kentucky businessmen who are on trial for election fraud.

Newsome, who is serving 26 months in federal prison after being convicted of election fraud last year, agreed to testify against Ross Harris of Pikeville and Glen Turner of Drift in exchange for a lighter sentence. Defense attorneys claim Newsome made up the story about illegal cash contributions in an effort to get leniency.

Prosecutors claim Harris is the kingpin in a scheme to buy votes from impoverished mountain residents. They allege that Harris illegally funneled money into Newsome's 2002 re-election campaign.

Newsome - dressed in white shoes, jeans and a red shirt - said he was given cash contributions on three occasions: One for \$5,000 from Harris; two for \$8,000 and \$12,000 from a man he said he believed to be Turner.

"I used it in my campaign," Newsome said. "When I needed it, I would put it in my account."

Newsome said he received \$60,000 in cash donations for his re-election campaign that year and an additional \$14,000 in checks.

Newsome, who has continued to serve as judge-executive despite his conviction, said he didn't use any of the money to buy votes.

Newsome is expected to be called back to the witness stand when the trial resumes Friday morning in U.S. District Court in London. His brother, Bobby Newsome, also is scheduled to testify. Prosecutors said Bobby Newsome was present when Turner gave the judge-executive money.

Harris also is accused of funneling money into a Pike County campaign in an unsuccessful effort to defeat an incumbent judge, whom he blamed for a sex scandal involving one of his friends. The FBI alleged that Harris conspired to influence the election by providing money for a scheme disguised as a "get out the vote" effort. That involved paying people to haul voters to the polls.

Defense attorneys say the only financial contribution Harris made to the John Doug Hays campaign for Pike County district judge was a legal donation of \$1,000.

A jury of 11 women and five men has been listening to testimony for 1 1/2 weeks.

The charges against Harris and Turner are the latest in a string of federal election fraud cases from the region. Hays and seven others are scheduled for trial in October.

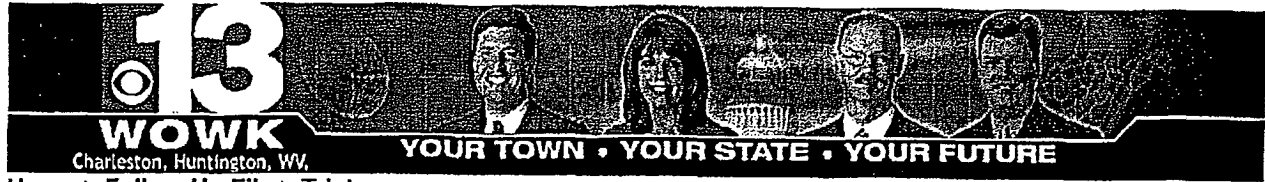
Assistant U.S. Attorney Ken Taylor contends that Harris illegally funneled some \$40,000 into Hays' unsuccessful campaign after a sex scandal resulted in the resignation of Pike County Circuit Judge Charles Lowe Jr. Taylor said Harris and Lowe were close friends.

Lowe resigned last year rather than face possible removal by the Judicial Conduct Commission for a sexual relationship with a woman involved in an adoption and child custody dispute in his courtroom.

Taylor said Harris was so angered by the scandal that he tried to lash out at the woman, Debbi Hylton-Mullins, and her husband, Pike County District Judge Darrel Mullins, who was seeking re-election at the time.

Hays was running against Mullins.

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## Logan Clerk to Plead Guilty in Election Fraud Case

Posted 11/29/2005 06:08 PM

### Voter Fraud in West Virginia

Story by The Associated Press

Logan County Clerk Glen Dale Adkins plans to plead guilty in the ongoing probe of election fraud in southern West Virginia.

Federal prosecutors Tuesday requested a plea hearing date for the 57-year-old. His defense lawyer disclosed plea negotiations earlier this month when his scheduled U-S District Court trial was postponed.

A federal grand jury indicted Adkins, also known as "Hound Dog," in July on charges alleging he conspired with others to bribe voters in elections between 1992 and 2002.

As part of their vote-buying probe, prosecutors previously landed guilty pleas by Logan County's sheriff and the city of Logan's police chief, prompting both to resign.

Like those former officials, Adkins is a Democrat. That party dominates both counties, and the election fraud charges largely focus on Democratic Party primaries.

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029863

## ***West Virginia Democrats on Defensive After Fraud Probe***

WV

CHARLESTON (AP) - West Virginia Democrats are on the defensive after the latest wave of election fraud charges again involve the Mountain State's dominant political party.

A federal magistrate last week arraigned and set July 11 trial dates for five men charged in an investigation into vote-buying in southern West Virginia.

Like five other area residents previously charged in the probe, the Lincoln County men are accused of aiding Democratic candidates with an alleged scheme to exchange cash or liquor for votes.

And like the 2004 round of criminal charges, the most recent indictment targets a Democratic officeholder: Lincoln County Circuit Clerk Greg Stowers. The then-sheriff of neighboring Logan County, Johnny "Big John" Mendez, was charged with vote-buying last year. Mendez resigned, pleaded guilty and was sentenced to home confinement and probation.

Stowers, 48, has vowed to fight the conspiracy count facing him. Though a lawyer, Stowers declined to comment on the pending case last week.

Gov. Joe Manchin considers the Stowers family to be political allies. Greg Stowers' brother, Lyle, volunteered for his campaign and was a "big supporter," Manchin spokeswoman Lara Ramsburg said.

Though no Republican has been named in the election fraud case, the state GOP has not been immune to criminal charges. A Republican state Senate candidate, Mark Anthony Reynolds of Fairmont, was convicted on federal wire fraud and obstruction of justice charges last year and sentenced to 10 years in prison. Reynolds had posed as a Republican Party insider as part of a shakedown scheme, prosecutors said.

And a pending Federal Election Commission complaint alleges former state GOP Chairman Kris Warner violated the law by pairing his brother's name with President Bush's on yard signs during Monty Warner's unsuccessful run for governor. The signs drew complaints from the Bush campaign before the election, and helped fuel the push to remove Kris Warner as chairman. He resigned last week.

The investigations are not a Democrat or Republican issue, Ramsburg said. "This is a law enforcement issue, just as the Republican Party leadership, specifically the Warners, are currently under federal investigation for things that happened during the campaign."

Political corruption is not new in West Virginia. Convictions have been numerous and both parties have a former governor sent to federal prison.

Republican Gov. Arch Moore pleaded guilty to five corruption-related felonies 15 years ago. Among his crimes, the three-term governor passed around \$100,000 in unreported campaign cash "to influence, secure, and retain the votes and influence of voters" during his successful 1984 campaign.

Democrat Wally Barron was cleared of a 1968 bribery indictment but in 1971 was indicted again on jury tampering charges stemming from his 1968 trial. He spent four years in prison.

The latest federal indictment alleges the Lincoln County defendants aimed to maintain power over county jobs, road gravel and paving materials, and property tax assessments, among other areas. Toward that end, the conspiracy sought to buy votes to secure the election of certain candidates, including Stowers, "to countywide office," the charges allege.

That has not prevented state Republicans from raising the question of wrongdoing by other Democratic candidates on the "slates" allegedly passed out by the conspirators. Several of the charges focus on the 2004 9869

primary, when Gov. Joe Manchin, U.S. Rep. Nick Rahall and even Sen. John Kerry, D-Mass., the Democrat's eventual nominee for president, were on the ballot.

Raleigh County businessman Rick Snuffer, for instance, offered Friday to seek Rahall's seat "if Rahall is forced to leave office due to the expanding level of indictments and investigations into voter fraud."

Snuffer, who ran unsuccessfully for the 3rd District seat last year, noted that "I understand no one has publicly tied the Congressman to vote buying and other voting improprieties."

Republican U.S. Attorney Kasey Warner's office filed the vote-buying charges. The cases are being handled by two assistant prosecutors whose tenure in that office precedes that of Kasey Warner, a Bush appointee.

Kasey Warner has repeatedly said he has erected an "incredibly high wall" to separate the activities of his office from the political activities of his brothers, Monty and Kris.

029870



KY



## Man charged with offering beer for vote

LUDLOW, Kentucky (AP) -- A man tried to buy a vote with a 12-pack of beer, according to police in northern Kentucky.

Edward Lucas offered the beer to an 18-year-old student at Ludlow High School in exchange for a no vote on a proposed increase in school property taxes, Ludlow police officer James Tucker said in an affidavit.

Lucas was charged Friday with making or receiving expenditures for vote, a class D felony that can land him in prison for one to five years.

Lucas, 40, denied the charge.

"I don't know the boy, and that's not exactly what was said," Lucas said.

"I said, 'I hope it doesn't go through and if it doesn't, I'm going to have a big beer party.'"

Lucas was arrested Friday and released on bond Saturday.

Police dispute his version of the exchange, but declined to give specifics.

The tax increase was on the ballot Tuesday and lost.

It would have generated about \$75,000 a year for school construction projects.

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Statewide/Regional

Bysiewicz defends state voting rolls

Lolita C. Baldor, Register Washington Bureau October 22, 2002

WASHINGTON — Recent suggestions that up to 54 Connecticut voters may have cast ballots in two different states in 2002 are not true, Secretary of the State Susan Bysiewicz said Monday after a weeklong investigation.

Bysiewicz said the data provided by the Republican National Committee was "highly flawed" since more than half of the people named never even voted in Connecticut in 2000.

"It appears that the RNC has made allegations that were completely unfounded," she said. "And I hope this was not an attempt to distract voting officials or discourage voters from participating on Election Day."

Of the 54 voters listed by the RNC as possibly voting in two states, 15 voted only in Connecticut; 29 voted only in a state other than Connecticut; three were only registered in Connecticut and four names were discounted because they had different dates of birth.

Ultimately, she said, the names of three voters have been referred to the FBI and U.S. Attorney because Bysiewicz has been unable to get the necessary voting information from the other state.

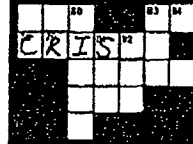
RNC spokesman Dan Ronayne made it clear when the initial documents were released Oct. 8 that Republican officials were not charging anyone with wrongdoing or election fraud. Instead, he said the RNC had analyzed its voter lists, compared records, found the discrepancies and released them to state authorities to point out possible problems.

"To say this was an attempt to take time away from the election is patent nonsense," he said, adding that RNC officials were

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"very disciplined" in their research.

Bysiewicz acknowledged that state officials found that some of the problems were caused by errors by local voting officials who entered the wrong names into the computer.

When voters cast their ballots on Election Day, the poll workers check off their names on large sheets.

That information is later transferred into the computer - which is where some of the errors occurred, Bysiewicz said.

She added that the problems with the 51 voters already cleared lead her to believe that the three names still being investigated also may simply be a case of human error.

Ronayne said Bysiewicz should examine and correct the problems, "instead of engaging in partisan accusations - after all, we all share the same goal: clean and fair elections."

"Our only motivation is to promote clean and fair elections, and the Secretary of the State has apparently found problems in the record-keeping in Connecticut as a result of an investigation brought on by our research," he said.

The RNC also turned over the names of about 7,700 voters who may be registered in Connecticut and one other state. Bysiewicz said she has referred those names to local voting officials in the various towns.



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The officials have until the end of the year to research the voters and determine if the records are correct.



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Lolita C. Baldor can be reached at [lbaldor@nhregister.com](mailto:lbaldor@nhregister.com) and (202)737-5654.



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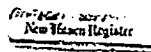
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*Mixed*

# Despite Crackdown, Some Double Voting

Worst Problems Cited Involve D.C., Md.

*DC/md/VA*

By Dan Keating  
Washington Post Staff Writer  
Thursday, October 31, 2002; Page B08

Double voting in the District and Maryland has persisted despite a 1998 effort to crack down on the practice, according to election records, and local officials say that an election reform law signed this week by President Bush will not fully address the problem.

Records indicate that two dozen voters cast ballots in both the District and Maryland in the Sept. 10 primary and that 90 voters did so in the November 2000 election. Double voting in the District and Virginia appears to be far less common -- the records show only six people voting in both the District and Northern Virginia in November 2000.

A provision in the new federal law requires states to create centralized, computerized voter rolls to prevent multiple voting by people registered in more than one place. The District and Maryland already have such records, however. The problem is that different jurisdictions seldom compare registration lists or voting records to spot duplicate names, Washington area elections officials said.

The last time such a review was done was in 1998, when D.C. elections officials looked at voting records and gave the U.S. attorney's office the names of 261 people who appeared to have double-voted in the District and Prince George's County during the previous three years.

But that investigation did not lead to any prosecutions, said Channing Phillips, a spokesman for the U.S. attorney in the District. Phillips said yesterday that officials could not find the paperwork explaining why no one was prosecuted, and Alice P. Miller, executive director of the D.C. Board of Elections and Ethics, said her office could not locate those records either.

Miller said the District has not made a more recent attempt to find double-voters, in part because the city's drive to obtain and install new voting equipment was a higher priority.

A review by The Washington Post found that more than 10,000 people are registered to vote in both the District and either Prince George's or Montgomery counties. The Post found people listed as having cast ballots in the District and Maryland on the same day by studying voter histories that were based on signatures collected when voters checked in at the polls.

When contacted by a reporter, the voters said that they had cast a ballot only once and that the records must be wrong.

"That must be a mistake," said Denise Daniels, 33, listed as voting in both Prince George's and the District in 2000 and 2002. "I'm going. I have to go. I don't know what this is about."

Harold Bobbitt Jr. also is listed as a double-voter.

"I moved to College Park," he said. "I'm no longer a District voter. I started voting in College Park in 2000, but I didn't vote in D.C. That might be a mistake in the D.C. computer."

Bobbitt noted that he has the same name as his father, Harold Nathaniel Bobbitt Sr. The voting records

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however, indicate that ballots were cast in the District and Maryland in 2000 and 2002 by Harold Nathaniel Bobbitt Jr., age 46. And Bobbitt and his father are listed as having voted in last month's D.C. primary.

The most prolific repeat voter, according to the records, is Betty J. Johns, 69, listed as casting ballots in both Maryland and the District in the 1996 and 2000 presidential elections, as well as in the Democratic primaries in the District and Prince George's on Sept. 10. A woman who answered the phone at her residence said no one there would talk to a reporter.

Larry Poteat Jr., 22, moved to Prince George's County this year from the District but was listed as voting in both places in September. His father, Larry Poteat Sr., said that he voted in the primary in the District, yet there is no record of the father's vote.

"If they don't have me down as voting, something's crazy," the father said. "They gave both of the votes to [my son], in Prince George's and D.C."

Election officials said it is possible for precinct workers to make mistakes when recording who voted. Such errors also would be a serious problem, voting reform activists say, because they could make it impossible to compare the number of ballots counted with the number of people listed as voting. Matching those two figures is a first step in making sure that ballots were not discarded and that phony ballots were not counted.

In the District, vote fraud is a felony punishable by five years in prison or a \$10,000 fine. In Maryland, the punishment is a fine of up to \$2,500 and up to five years in prison.

When registering to vote, people are asked on a form where they were previously registered, but some don't fill it out. The form is then sent directly to the previous jurisdiction if it is in the same state. But if it is not in the same state, the form goes to the capital of the state where they used to live, which slows down the process, election officials said.

Officials said the best way to weed out such names is to compare lists of all registered voters, which the District initiated in 1998. Election supervisors in Prince George's and Montgomery said it would be up to the state to launch such an effort.

Reform advocates said cleansing registration lists of old names and maintaining accurate voting records are crucial steps in ensuring clean elections.

"It doesn't matter what kind of voting equipment you have if you have dirty voter rolls and you don't have the people to keep them clean," said Deborah Phillips of Arlington, former head of the Voting Integrity Project.

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Posted on Sun, Jul. 31, 2005

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## No fraud found in Duval vote

FBI probe finds no double ballots cast THE ASSOCIATED PRESS

**JACKSONVILLE** - Investigators found no evidence that anyone cast more than one ballot in the November election in Duval County, although an investigation into fraud allegations from early voting in the county continues.

County Elections Supervisor Jerry Holland said the FBI investigation didn't turn up any evidence that voters cast more than one ballot in the county either on Nov. 2 or in absentee voting.

Officials said in January that a review of voting records uncovered more than 50 cases in which it seemed the same person had cast an absentee ballot and voted on Election Day or otherwise voted twice in some way, such as voting in two places, leading U.S. Attorney Paul Perez to launch a federal investigation.

But Holland said each apparent case of double voting was attributed to a clerical error, such as someone signing the voter rolls at one polling place before being told they had to go to another location to vote. One case involved a father and son with the same name who signed in the wrong place.

About 380,000 people voted in the November election in Duval County, so the votes in question represented less than one-50th of 1 percent.

"These results show voters that they can have confidence in the elections office," Holland said.

Double voting is punishable by up to five years in prison and a \$10,000 fine.

The FBI will continue to look into some allegations of potential voter fraud that stemmed from early voting in the county, Holland said.

"These results show voters that they can have confidence in the elections office."

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**Jerry Holland**  
county elections supervisor

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FL Sun-Sentinel – October 25, 2002

FL

**Florida has more double voters than any other state**

By Sam Trantum  
Staff Writer

More than 361,100 people were registered to vote in multiple states during the 2000 elections, and 1,636 of those apparently cast more than one ballot, according to the Republican National Committee.

Florida was the worst offender in both categories, with 67,065 duplicate registrants and 307 double-voters, according to the committee's report.

While the Republicans insist they released the report in an attempt to help state officials run clean elections, Democrats say it is a partisan ploy – part of the GOP's national strategy for Nov. 5.

Florida elections officials say have not looked into the Republicans' claims but at least two other states have investigated.

Connecticut Secretary of State Susan Bysiewicz, a Democrat, said her office found that 53 of 54 supposed Connecticut double-voters – including six who allegedly had cast ballots in both Connecticut and Florida – had not cast ballots in more than one state. The office did not investigate the claims of duplicate registration.

"We have highly flawed data and not one shred of evidence to support the very serious allegation of double-voting," Bysiewicz said.

She said her office had been unable to get the information it needed to figure out whether the 54th person on the list had voted in Virginia as well as Connecticut, so it referred the case to the FBI.

"Of course she's going to say that there's no cases of this happening," RNC spokesman Kevin Sheridan said. "The secretary of state is in an election fight, and she's defending her own record."

New York City elections officials also are investigating the Republicans' claims of voting fraud. There has been no resolution of the issue so far, spokeswoman Naomi Bernstein said.

Registering in more than one place is easy to do and isn't illegal if it isn't intentional.

"I think it's something that people do once. They move someplace and do it again," National League of Women Voters spokeswoman Kelly Ceballos said. "They might not be aware of it."

The problem is there's no good way to make sure someone doesn't vote in more than one state.

There's no official national voter database, and in many states there isn't even a statewide voter database. The RNC pieced together its national database by buying voter lists state by state, county by county.

Voting twice in the same election wouldn't be too hard, either. A voter could cast an absentee ballot in one state and vote in person in another, for example. Such double-voting

has long been rumored to be practiced by part-time residents of Florida.

"I'm sure that a lot of people that winter down here are registered down here just like they are up north," Boynton Beach resident Dan Winters said.

Casting multiple votes in one election is a felony, elections officials say.

By releasing the report on double-voting, the RNC was just trying to help ensure clean elections, Sheridan said.

"We tried to do nothing but be helpful to the authorities," Sheridan said.

But Bysiewicz said she did not think the RNC's intentions are so innocent.

"I believe this is a deliberate attempt to distract election officials across the country from their responsibility to encourage voter participation and administer fair elections," she said.

Republicans shouldn't spend so much time trying to keep people who shouldn't be voting from casting ballots, said Kevin Jefferson, president of the Democratic National Committee's Voting Rights Institute.

"What they should be doing is making sure that people are going to the polls, that they have the right to cast the ballot and have that ballot counted across Florida," Jefferson said.

Sam Tranum can be reached at [stranum@sun-sentinel.com](mailto:stranum@sun-sentinel.com) or 561-243-6522  
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KansasCity.com

Posted on Mon, Mar. 28, 2005

KS/MO

## Lawyer admits voting twice in four elections

A Kansas City, Kan., lawyer admitted today to illegally voting in both Kansas and Missouri.

James D. Scherzer, 68, pleaded guilty in federal court in Kansas City to four counts. He cast double votes in two elections in 2000 and two elections in 2002. He will be sentenced later to a maximum on each count of one year in prison, one year of probation and a fine of up to \$100,000.

Scherzer was charged after an investigation by *The Kansas City Star* found thousands of double-registered voters in the area and several hundred cases of possible double voting. Scherzer declined comment Monday.

Previously, he told a reporter that he acted on his own with no particular motive.

"I don't have some rationale, or a highfalutin story," he said.

No sentencing date has been set.

— Joe Lambe

See *The Kansas City Star* tomorrow for more local news.

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KS/MO

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## Man Pleads Guilty To Voting In Kansas, Missouri



Mon Mar 28, 3:41 PM ET

A Kansas man pleaded guilty in federal court Monday to voting in federal elections in both Kansas and Missouri.



James D. Scherzer, 68, of Kansas City, Kan., pleaded guilty to a federal charge accusing him of four counts of voting fraud, which is a misdemeanor civil rights violation. The information, which was filed on Dec. 13, 2004, replaces a criminal complaint filed against Scherzer on Oct. 21, 2004.

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Federal investigators said that Scherzer voted twice, in both Wyandotte County, Kan., and Kansas City, Mo., in the primary and general elections in 2000 and in the primary and general elections in 2002. As a resident of Kansas, Scherzer was not qualified to vote in Missouri.

"We take vote fraud seriously because it diminishes the value of legitimate votes cast by qualified voters. The Equal Protection Clause of the Fourteenth Amendment guarantees qualified voters the right to have their votes counted without being diluted by spurious ballots cast by unqualified voters," U.S. Attorney Todd P. Graves said a news release.

Scherzer could face a maximum of one year in jail and a \$100,000 fine.

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Posted on Tue, Mar. 29, 2005

## **P.S.: Lawyer pleads guilty to double voting**

A Kansas City, Kan., lawyer admitted Monday that he had voted illegally in Kansas and Missouri.

James D. Scherzer, 68, pleaded guilty in federal court in Kansas City to four counts. He cast double votes in two elections in 2000 and two elections in 2002. He will be sentenced later to a maximum on each count of one year in prison, one year of probation and a fine of up to \$100,000.

Scherzer was charged after an investigation by *The Kansas City Star* found thousands of double-registered voters in the area and several hundred cases of possible double voting. Scherzer declined to comment Monday.

Previously, he told a reporter that he acted on his own with no particular motive.

"I don't have some rationale, or a highfalutin story," he said.

No sentencing date has been set.

— Joe Lambe/The Star

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029881

Online archives from The Sun Chronicle.

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November 18, 2000

Recounts serious matter

BY RICK THURMOND / SUN CHRONICLE STAFF

Eleanor Ruest, a longtime North Attleboro election commissioner, is not amused.

For days on end, jokes and gibes have been directed at Florida election officials who, for just as long, have been squinting through pinpricks in stacks of punch card ballots, trying to divine each voter's intent in the closest presidential election in more than a century. "What else would you expect to see," Ruest huffed. "Anyone who thinks that's funny obviously has never been through a recount."

*mas*

While the eyes of a nation look south to Florida and what seems an electoral train wreck, Ruest and others who have been through recounts say what's going on now in Florida has happened here, and can happen almost anywhere a voter walks up to a ballot box.

Messy litigation in a high-profile election? Massachusetts has been there, done that.

Four years ago, after a recount, it came down to the courts to decide who would be the Democratic nominee to represent Massachusetts' 10th Congressional District. That Democrat still holds the seat.

Voter fraud?

While election officials say outright fraud is so rare these days it's inconsequential, an Attleboro man came forward after the April 1996 primary to say he voted three times -- in North Attleboro -- just to prove it could be done.

Cliffhangers?

An Attleboro city council race in 1985 hung by a single chad, those pesky bits of paper that can dangle from a ballot when a vote is cast. After a recount, the victor suddenly was the loser -- again, by a single chad hanging from one of those punch card ballots.

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"No election is perfect. They can't be," Ruest said. "You've got humans and you've got machines. Both make mistakes."

Part of the system

Like it not, mistakes are part of the system. Mistakes usually don't matter, the reasoning goes, because they are random and are spread across the ballot.

"This goes on all over the country," said Rebecca Mercuri, a visiting professor of computer science at Bryn Mawr College in Pennsylvania and a frequent expert witness on computer security and voting systems.

"Voting anomalies happen all over the country, in most states," she said. "Most voting systems have an error rate of between 2 and 5 percent. Most election officials will admit to that."

The problem in Florida, and with this presidential election in general, is the margin of victory seems to be far less than the accepted margin of error.

"Flaws don't matter if the vote is 60-40," said Victor DeSantis, a political science professor at Bridgewater State College. "Those flaws show up when the vote is 50-50."

In Florida, much of the blame has been leveled at the now-infamous punch card ballot, a voting system that has been outlawed in Massachusetts since September 1998.

Massachusetts Secretary of State William Galvin threw out that type of ballot because of the havoc it caused in the 1996 Democratic primary for Massachusetts' 10th congressional seat.

The primary night count gave Philip Johnston a 266-vote lead over William Delahunt out of more than 35,000 votes cast. A subsequent recount whittled Johnston's lead to 181 votes, but still he prevailed.

Delahunt, dissatisfied with the outcome of the recount, took the matter to Superior Court where Judge Elizabeth Donovan re-examined the ballots by hand.

In question were almost 1,000 punch cards that had been blanked by voting machines and tossed out, mostly at polls in Weymouth, Abington and Orleans.

The judge determined in many cases that electronic scanners read ballots as blank only because they had not been punched

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cleanly through. She gave the election to Delahunt by 108 votes.

Johnston was campaigning with First Lady Hillary Clinton at a Democratic unity rally when that thunderbolt struck. He promptly filed an appeal with the Supreme Judicial Court, arguing that if ballots were left blank or were only slightly indented, it was because voters hadn't made up their minds.

But that would have meant, in Weymouth alone, almost 23 percent of voters had intentionally cast blanks and, Delahunt argued, they turned out on a stormy night to do it.

The Supreme Judicial Court affirmed Judge Donovan's ruling.

Galvin said he knew of nothing like that happening before in voting for such a high state office, and ordered state monitors to the polls for the Nov. 5 presidential election in cities and towns that used the punch card ballot.

The problem with punch cards is that votes aren't always cleanly punched through, and when they are, chad can then shift around, jamming other holes so that those votes are misread.

Attleboro area election officials had long been aware of the pitfalls of punch card ballots, and for the most part had junked them before the statewide ban was imposed.

"You could run the ballots through three times and get three different results because those chad would fall off," said North Attleboro Elections Chairwoman Diane Szpila.

North Attleboro discarded punch cards after an acrimonious election to build a new middle school in January 1995. A recount was held when the new school was approved by a 158-vote margin out of 5,290 votes cast. The school lost eight votes in the recount, but overall the project prevailed.

"A lot of the chad were still hanging on when we did the recount," Szpila said.

Ruest, who was elections chairwoman at that time, called that election, "the straw that broke the camel's back."

"Hardly any of them went through the first time," she said.

Election officials are told to keep punch card ballots away from moisture, lest they become even more difficult to punch through. So where were those ballots stored for years in

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01/24/2001 10:00 AM

Attleboro? On the basement floor of city hall, said Jessie Joubert, who worked for more than two decades in the city elections office.

Problems can also occur when the ballots are misaligned.

“We found a lot of ballots where the punches weren't where they should have been,” Joubert said. “There was nothing we could do. The machine automatically canceled them out. We had a lot of those, I'll tell you.”

In 1985, Tony Viveiros beat incumbent Thomas Dudson by one vote in the initial count for the Ward 2 city council seat. He lost by one vote in a recount.

“It was just like what you're seeing on TV now in Florida,” he said. “Election people looking up at a ballot, trying to figure out what was the voter's intent. If there was a hanging chad, it had to be more than half-way through.”

“I broke into tears when it was all over,” Viveiros said.

And what of punch card ballots?

“I hate 'em with a passion,” he said.

Bill Crowley, an Attleboro election commissioner, is more blunt. “They're a bitch,” he said.

“We would have disagreements every election because the count was off all the time,” Crowley said. “If we had 1,000 ballots, maybe the count would come out 995. On occasion, we'd run them through two or three times until the count came close to what it was supposed to be.

“That's sad, but that's the way it worked,” he said. “Those machines just weren't 100 percent.”

Punch card ballots are still widely used across the United States, despite their drawbacks, experts say.

In Massachusetts, four types of voting systems are used.

By far the most common is an optical scanning system which reads marks a voter makes on a ballot. It's in use throughout the Attleboro area and in 908 precincts in 147 cities and towns.

Old-style lever machines, which aren't manufactured anymore, are used in 434 precincts in 23 communities.

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Paper ballots are still used in 79 towns.

Four communities, Dighton, Franklin, Lawrence and Milton, still use a variation of the punch card ballot, although unlike in Florida, the names of candidates are printed on the card.

But even those systems can stumble.

"In any system, people can make mistakes," said Brian McNiff, spokesman for the secretary of state's office. "They can make mistakes with an opti-scan."

"I'm not sure the secretary would ever get into the acceptance rate of errors," he added.

Crowley said optical scanners are far better than the old punch card system, although "they're still subject to error."

"We have people who still try to punch holes through the ballot, or make an X or they circle the little oval they're supposed to fill in," he said.

And, sometimes optical scanners misread marks even when the marks are penciled in correctly.

"Readers, anything that scans things optically, have an error rate," Mercuri said.

"Even the SAT people will admit to an error rate," she said, referring to college entrance tests which for years have relied on optical scanners.

With the electoral mess in Florida flickering on television sets 24 hours a day, there have been rumblings in Congress to devise some kind of unified voting system.

It'll never happen, said Bruce Schulman, a history professor at Boston University.

"It's one of those things like the Electoral College," he said. "Legislation will be filed to reform it, but it won't get very far.

"Technologically, it's possible and it should be done," Schulman said. "But it won't be done for two reasons. First, it's too expensive. That's why so many cities are still using this ancient stuff. Then, there's the political side. Laws and established tradition say that states and local governments administer elections."

A statewide unified voting system hasn't even been discussed

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in Massachusetts, McNiff said.

A unified system is, so far, unworkable and unnecessary, Mercuri said.

"As long as you have a system that allows a manual recount, then you have the possibility of a recount," she said. "That's what most municipalities do.

"As long as you're willing to accept that, then every vote does count.

"Even a punch card you can hold in your hand; you can see the chad," she said. "You don't get that with an Internet system or a computer system where you touch the screen. There's no audit trail."

Besides, Mercuri said, "As a programmer, I could write an interface that would send 10 percent of Gore's vote to Buchanan. Even some high school students could do that."

And what of voter fraud?

So far, there have been no substantial charges of outright fraud in this election, although some college students in Wisconsin have admitted to casting multiple votes as a prank.

Those reports brought memories flooding back to Edmund Morrison, a South Attleboro man who said he cast three votes in North Attleboro during an April 1996 primary, just to prove it could be done.

Morrison said he did so because he had overheard a group of women in a North Attleboro restaurant talking about how they had voted more than once in the middle school election a year earlier.

Morrison had just moved from North Attleboro at that time, and still was listed on the town's voter registration rolls. He said he cast one vote as himself then used the names of two friends to cast opposing votes that canceled each other out.

"I didn't do any malice," he said. "I just wanted to show how easy it was to do, and that voters should be required to show some form of identification."

That little act could have cost Morrison a \$10,000 fine and up to five years in prison, but the court declined to prosecute because, other than his own word, there was no proof he had committed fraud.

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To this day, Morrison is unapologetic.

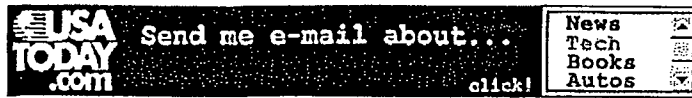
"Those college kids proved, again, how easy it is," he said.  
"I think it smells to high heaven."

And North Attleboro election officials are still unsure  
Morrison really did what he said he did.

"I think it was wishful thinking on his part," Ruest said. "He  
was all too anxious to call the Boston Globe.

"I looked over the voting list a long time, but I couldn't find  
anything."

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PRINTTHIS

10-23-02

**Dems blast GOP efforts on voter fraud**

By Jim Drinkard, USA TODAY

*Mixed*

WASHINGTON — Efforts by the Justice Department and the Republican Party to guard against voter fraud have ignited a long-smoldering dispute that could have an impact on close national elections less than two weeks away.

The Republican Party has compiled a national database of 3,273 names of people who it says apparently voted more than once in the 2000 elections. It is turning the list over to local authorities for investigation and possible prosecution.

But early looks at the data by state officials have found little evidence of multiple voting.

At the same time, the Justice Department is mounting what it calls an unprecedented effort to police voter discrimination at polling places and prosecute voting fraud. Attorney General John Ashcroft held a daylong "Voting Integrity Symposium" this month to train more than 300 representatives of FBI and U.S. attorney's offices across the nation "to prevent election offenses and to bring violators to justice."

Some Democrats accuse the GOP of aiming to intimidate voters — particularly minorities and new immigrants, who they believe lean Democratic.

*Voting more than once*

"The last thing we need are partisan efforts that could make it harder for law-abiding citizens to vote on Election Day," said Sen. Chris Dodd, D-Conn., chairman of the committee that oversees elections.

The stakes are immense. Majorities in the House and Senate hang on a handful of races scattered across the country. Both parties say the outcome will hinge on which side does the best job getting its supporters to the polls.

The skirmish is emblematic of longstanding tension between the Republicans and Democrats. It was evident most recently in the struggle over legislation in Congress to fix the election process after ballot problems in 2000. That legislation was stalled for months while Democrats and Republicans argued over whether to include anti-fraud provisions, including identification requirements for new voters, that had been sought by Republicans.

Connecticut, the first state to check the GOP's multiple-voting data, found it "highly flawed."

Officials said that at least 51 of 54 names listed as voting both in Connecticut and elsewhere were erroneous.

Secretary of State Susan Bysiewicz, a Democrat, called the list "a deliberate attempt to distract election officials across the country from their responsibility to encourage voter participation."

In North Carolina, officials found that the first name on the double-voting list was that of state Rep. Martha Alexander, a Democrat who chairs the General Assembly's panel on election laws. "It's got to be two people with the same name and birth date," said Gary Bartlett, director of the state Board of Elections.

Shad Balch, a spokesman for California Secretary of State Bill Jones, a Republican, said, "It looks like we're going to be able to refute their claims."

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Party spokesman Kevin Sheridan said the project was carefully done using publicly available voting records and other material.

"The intent was to provide it to authorities interested in our research ... and to take any action they deem necessary to clean up the process or to bring legal action against people involved," he said. Although the GOP knows in some cases the political affiliation of the voters on its list, "we're not making that available," he said.

Regarding the Justice Department's anti-fraud effort, Wade Henderson of the Leadership Conference on Civil Rights called it "a solution in search of a problem" and "a warmed-over plan for voter intimidation."

There is concern among civil rights advocates that Justice's investigation of alleged fraudulent voter registrations in South Dakota on and near Indian reservations is scaring off potential voters.


Ashcroft spokesman Mark Corallo dismissed the concerns: "The only people intimidated are the people who were going to cast fraudulent ballots, and that's the point here." Even so, the issue has flared in other places, as well:

- Party officials in Arkansas are trading charges of fraud and voter intimidation. Republicans say Democrats have generated bogus voter registrations; Democrats say Republicans have tried to photograph and intimidate minority voters waiting in line to cast early ballots in Pine Bluff.
- The Texas GOP on Oct. 10 announced a "ballot integrity" program to guard against voter fraud by "our less ethical opponents." The effort, detailed on the state party's Web site, calls for recruiting poll watchers who will look for irregularities on Election Day.

**Find this article at:**

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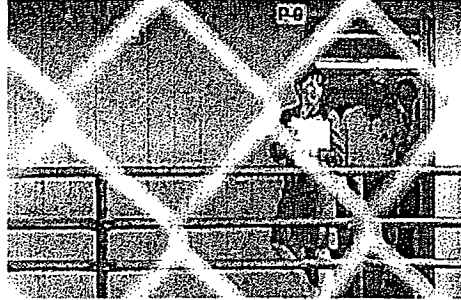
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## County Probes Voter Fraud

May 12, 2005  
James Osborne  
*The Monitor*



Hidalgo County Elections Administrator Teresa Navarro emerges from behind closed doors Wednesday at Austin Middle School in San Juan after a ballot recount from Saturday's mayoral race.

## San Juan mayor's victory upheld

SAN JUAN — Mayor-elect San Juanita Sanchez's three-vote victory stood up in a recount Wednesday, but the city election will undergo further scrutiny when a county investigation into voter fraud begins later this week.

Hidalgo County Elections Administrator Teresa Navarro said she could go to a grand jury as early as next week, once she reviews election records to determine just how many people voted more than once in the city election.

On Monday two women admitted to having voted twice after being pressured to do so by politiqueras.

"It's under review until next week. From there it could go to the grand jury and then it could be investigated by the District Attorney's office," Navarro said.

"Depending on what we're able to get, if we feel something was orchestrated we proceed with the case ... a lot of the time a voter will say an election worker coerced them, but it depends on the individual."

Illegal voting is a Class A misdemeanor, carrying a possible \$4,000 fine and one-year jail sentence, according to the Texas Election Code.

Suspicion first arose Monday morning when three uncounted ballots were found under a box in the vote counting room by City Secretary Vicki Ramirez. All three votes for mayor were cast for veteran City Commissioner Eleazar Romero. Two of the voters admitted they voted during the early voting period before being taken by the politiqueras to vote "curbside" Saturday.

Curbside voting allows and elderly or disabled voters to cast their ballot from a vehicle without having to enter a polling station. The election official outside — in this case Ramirez — is supposed to make sure the individual is in fact elderly or disabled and cross-reference their name against a voter list before allowing them to cast a ballot.

"From what I understand, that didn't happen," Navarro said.

Ramirez declined to comment.

Romero said again he has no knowledge of any wrongdoing within his campaign.

"That's the county's deal, and I don't really have anything to say about that," he said.

"I played no part in that. If something did take place, I had no knowledge of that."

Both Sanchez and Romero accompanied county election officials around the city's polling stations Wednesday morning, as they checked the voting machine tallies against those recorded by city election officials. In tow were around 25 of Sanchez's friends and family, who waited anxiously for word Monday's election result would hold up.

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After officials counted up the paper mail-in and curbside ballots, the final tally was announced as 1,126 to 1,123 in favor of Sanchez.

For Sanchez, who lost to outgoing Mayor Robert Loredo in 2003, the news ended a difficult few days in which she had to sit in on a meeting concerning the three uncounted votes only hours after the funeral of her father, who died in a household accident Friday.

"It was a sigh of relief in that I'm finally on the different end of this," Sanchez said.

"But I had faith. I've been through so much this week, with the passing of my father, it puts everything in perspective."

Romero said he would not contest the election result in court.

"I'm going to let this one go by; she won fairly," he said.

"I wish Ms. Sanchez all the luck in the world."

Sanchez will be sworn in as mayor at a special meeting Tuesday evening. Asked if she expected any difficulties in serving alongside commissioners whom she has openly criticized for years, the 41-year-old attorney was optimistic.

"I'm anxious to get started and work with everyone who's there," she said.

"If they're willing to do the things they said they wanted to do for the city, which are a lot of the same things I want, then I think we can work together."

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James Osborne covers PSJA and general assignments for The Monitor. You can reach him at (956) 683-4428.

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## Top Stories

### Five local voters cast two ballots each in primary

By: Lauren Hutton, Courler Staff

March 25, 2004

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### A handful of Montgomery County voters tried to get more bang for their ballot during the March 9 primary elections.

According to Montgomery County Elections Administrator Carol Chedsey Gaultney, five of the county's registered voters cast a ballot in both the Republican and Democratic primaries, which violates the election code. None of the races was affected by the discovery.

"It came to my attention late last week when entering voter history into the computer," Gaultney said. "Most people don't understand the primary system in Texas."

That was the case for Jay Marshall Smith, 22, of Conroe, who said it was his first time to vote.

"When I went to vote, I did not see a sign that (the poll) was only for Republican voters," he said Wednesday. "By the time I figured it out, it was already too late."

Smith, who then went to vote in the Democratic primary, said he hopes to see better signs next election.

Gaultney has passed the voter information to District Attorney Michael McDougal, who can decide whether to prosecute the Class C misdemeanor violation, punishable by a fine of up to \$500 fine.

Montgomery County Republican Party Chairman Dr. Walter Wilkerson said the District Attorney's office at least should interview the voters to learn their motives.

In these cases, according to Montgomery County Democratic Party Chairman Raymond McNeel, district attorneys usually do not prosecute because they have larger fish to fry.

McDougal did not return calls Wednesday.

"The larger concern is making the public aware of this problem," McNeel said.

"What I care about is that the public know they can't do this."

Another person who learned his lesson was Dieter Hellerbach, 70, of The Woodlands.

His wife Edda said her husband was new to voting in America, since he was from Germany.

"He did not understand what the primary was about," she said.

When voters go to the primary polls, they must sign the polling book, which is a "voter's affidavit."

This says that the voter understands that it is a criminal offense to knowingly vote in a primary election or participate in a convention of another party during the same voting year.

Gaultney said this also means county residents who voted in either primary.

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cannot lawfully sign a petition to get Ralph Nader, who intends to run for president, on the ballot. Additionally, voters cannot vote in a different party's runoff election, such as the April 15 runoff for Railroad Commissioner. To learn more about the primary system and voting rights, visit the Montgomery County Elections Central Web site at [www.pleasevote.us](http://www.pleasevote.us). Visitors can sign up to receive a newsletter with updates on voting in the county.

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### Reader Opinions

Post your opinion and share your thoughts with other readers!

▶ Name: Don Reynolds

Date: Mar, 26 2004

Hello,  
Well, here's my recent voting experience. Like any good voter, I showed up at BB Rice, the sign at the door confused me a little...it said that Democrats had to vote elsewhere, I forget the exact wording and rationalization, but since I had decided to vote Republican, I turned right and walked down the hall. I was the only voter in the building, what's going on there? Showed them my card and they informed me I was at the wrong place, and gave me directions to the right one. I backtracked, down Loop 336 to the Conroe YMCA. Parked, and did a walking tour of the facility. I'd never been there before. After walking a mile or so, and was about to give up, I spotted some movement in a small building out back and despite having to walk another mile, decided to check it out. Turned out it was the polling place. Again, I was the only voter there. The poll people told me how they were starving, seems like someone forgot to pick up their order of food at Vernon's. I offered to help, but they assured me they were ok and could stick it out. Like a good MC Democrat, I cast my vote for Jenkins, Dean, and left. The whole experience leaves me wondering if some "powers that be" are trying their best to keep MC citizens from voting.

dr

▶ Name: Sam Brandon

Date: Mar, 25 2004

It is true that something needs to be done to prevent something like this to happen again. However, it appears to me that on the Republican side they rubber stamp the voters card. Does the Demos do the same? If, so how come the second voting table didn't see it? Maybe, the both election judges need to determine how that system failed. It shouldn't cost a lot of time or money as a volunteer.

Someone dropped the ball. If, this would have been the general election I'm afraid you would probably see Demos screaming to recount. This may not be a big issue, but it does say that our penciling in process is a little out dated. Does anyone agree with that?

Number of Opinions: 2

1 - 2 of 2

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Oct. 18, 2003, 2:47PM

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## Hearne man sentenced in illegal voting case

Associated Press

COLLEGE STATION -- A man has been fined \$2,500 and sentenced to five years probation after he pleaded guilty to illegal voting for casting 34 ballots during the May municipal elections in nearby Hearne.

Charles Workman did not cast a vote in his own name during the election, in which incumbent Mayor Ruben Gomez was re-elected.

But authorities said he did vote for nearly three dozen other residents using absentee ballots. He also forged forms saying some people had moved from one home to another.

Workman will not be allowed to campaign or collect absentee ballots during his probation, Robertson County District Attorney John Paschall told the Bryan-College Station Eagle for today's editions.

The district attorney said Workman is the fifth person to plead guilty to similar charges brought by a grand jury in August. At least one person will serve jail time for his role, he said.

Paschall could not immediately recall the names of the other four individuals.

Workman was one of 17 people indicted in the voting fraud case in August. Another Hearne resident, Corona Williams, was indicted on seven counts of illegal voting Wednesday.

Allegations of voter fraud surfaced shortly after the May 3 election. The election had a 45 percent voter turnout, which is high for Hearne, and nearly 50 percent of the votes were absentee ballots, mailed in by people who claimed to be disabled.

Illegal voting is a third-degree felony punishable by two to 10 years in prison and a fine of up to \$10,000.

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<http://www.newsday.com/news/local/newyork/politics/ny-nvlieu232975372oct23.0.6392771.story>

# Ex-Candidate Accused of Voting Twice in Elections

NY

By Karen Freifeld  
STAFF WRITER

October 23, 2002

The former Conservative party candidate for lieutenant governor was arraigned yesterday on an indictment charging him with illegal voting.

Daniel Mahony, who was once Tom Golisano's running mate, allegedly voted twice in two general elections. In November 2000 and November 2001, he voted with both an East 14th Street address and an East 55th Street address, according to the Manhattan District Attorney's office. Mahony has denied that charge.

The politician was removed from this year's ballot because he said that, as of Aug. 14, he was no longer a resident of New York State. But prosecutors said a check of records show he is still listed as a tenant at the East 14th Street address.

Additionally, prosecutors in District Attorney Robert Morgenthau's office said their investigation uncovered evidence that Mahony faked a photo that he used as evidence in trying to get a parking fine reduced.

For that, Mahony was charged with a felony count of offering a false instrument for filing. Like the felony illegal voting charge, it is punishable by up to four years in prison.

Mahony, who was led to a Manhattan State Supreme Court courtroom yesterday in handcuffs but released on his own recognizance, pleaded not guilty.

Alan Futerfas, his attorney, later said he thought the charges were "unwarranted," and was disappointed they were brought. He also said he had never before seen a felony charge for a parking ticket.

The attorney said Mahony was an official resident of Connecticut.

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**The Seattle Times**

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Thursday, October 13, 2005 - 12:00 AM

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## Voter names found twice

**By Keith Ervin and Justin Mayo**  
*Seattle Times staff reporters*

Just one month before voters decide the future of King County's Democratic executive, Ron Sims, Republican Party leaders yesterday accused his administration of failing to remove thousands of duplicate registrations from the voter rolls.

GOP officials and Republican members of the Metropolitan King County Council said they officially will challenge the registrations of about 2,050 voters Monday.

In all, they said they found nearly 3,400 voters they suspect are registered twice with the county's Elections Office. They say they are challenging only those they can fully document.

Duplicate registrations can occur when voters re-register with new addresses or name changes if their old registrations aren't deleted from the voter database. The duplications alleged by the Republicans represent less than half a percent of King County's more than 1 million registered voters.

If duplicate registrations are not purged from the rolls, those voters could cast more than one ballot in an election, which is illegal. Republicans yesterday released the names of 16 voters they say voted twice in the contested 2004 governor's race.

Illegal votes, accounting errors and mishandled ballots in King County played a prominent role in Republican Dino Rossi's lawsuit challenging the election of Democrat Christine Gregoire as governor last year. Chelan County Superior Court Judge John Bridges ruled in June that he did not find a basis for overturning the election.

Election officials and Sims quickly said yesterday that at least one name on the GOP's duplicate-voters list appeared to be a mistake — and they questioned the Republicans' motives in making a media splash.

Elections Office spokeswoman Bobbie Egan said a woman singled out by the Republican Party as having voted twice in the 2004 general election and again in the 2005 primary actually appears to be two women with the same name but different birthdates.

At least two other names on the list of suspected double voters have been referred to the county Prosecutor's Office, and criminal charges have been filed against one person.

Elections Director Dean Logan said the Republicans seemed more interested in scoring partisan political points than in solving problems.

But Republican County Councilman David Irons, who is running against Sims for county executive, said his party's analysis of the voting list shows that Sims and Logan aren't doing their jobs.

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Irons has repeatedly called for Logan's dismissal and has proposed a county charter amendment that would put elections in the hands of an elected auditor.

"It's a sad day that we're here again talking about election flaws from this election and past elections," Irons said. "Dean Logan, why didn't you do the data search that, quite frankly, any high-school computer student could do?"

Logan took the unusual step of meeting with reporters before the Republican news conference to defend his record and attack his critics. About 40 election workers attended the meeting to show support for their boss.

"This has gone beyond interest in the elections and election integrity. In essence, this is a witch hunt trying to make this a top-tier campaign issue," Logan said later.

Logan said his office, as part of routine list maintenance, has purged the voter list of 9,100 voters' duplicate registrations and has dropped the names of 8,900 dead voters this year.

He said County Councilwoman Kathy Lambert, R-Woodinville, asked him several weeks ago to look at a Republican Party list of apparent duplicate voters and he agreed to do so. But instead of bringing him the list so he could check those registrations, Logan said, he learned yesterday morning the Republicans were preparing to release their findings directly to news media.

When Logan reminded her of that conversation yesterday, Lambert said, she told him that Republicans would give Logan their list and any future lists so errors in the voter rolls could be corrected.

The voter challenges being prepared by the Republicans will address two categories of suspected double registrations: voters who have exact matches of birthdate, address, and first, middle and last names; and women with matching first names, addresses and birthdates. The second group, numbering 3,702, are believed to have changed their last names because of marriage or divorce.

The Republicans are not at this time challenging 2,650 registrations of voters who they believe moved to new addresses but whose previous registrations were not purged. They will continue to investigate those voters, said party vice chairwoman Lori Sotelo.

*Keith Ervin: 206-464-2105 or [kervin@seattletimes.com](mailto:kervin@seattletimes.com)*

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**The Seattle Times**

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Friday, October 14, 2005 - 12:00 AM

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Election 2005

## Woman allegedly voted twice in elections

By Keith Ervin

*Seattle Times staff reporter*

A woman accused by the King County Republican Party of voting twice in the November 2004 election and again in last month's primary is under a criminal investigation for double voting, a county election official said yesterday.

The Elections Section referred the case to the county prosecutor's office Aug. 31 to investigate whether she voted twice in 2004, election spokeswoman Bobbie Egan said.

The woman, who lives in a downtown Seattle apartment building, has not been charged with a crime. The Seattle Times does not generally name suspects until they are charged.

She was on a list of 16 voters identified by the Republican Party as having voted twice in the 2004 election. The Seattle woman was the only person on the list accused of voting twice in each of two recent elections.

Egan said Wednesday the woman's name appeared twice in the voter-registration database with two different dates of birth, so it seemed there might be two voters with the same name.

Egan didn't realize on Wednesday that the woman's name had been forwarded to prosecutors, she said yesterday. She said she didn't know how election officials learned she might have cast extra ballots.

The woman apparently has had two registrations since 2004, but routine computer checks for duplicate registrations didn't bring up her name because she was registered under two different birth dates, Egan said.

Republican leaders said Wednesday they had found more than 3,000 voters who appear to be registered more than once, allowing the possibility of double voting. Their investigation of voter records is continuing.

*Keith Ervin: 206-464-2105 or [kervin@seattletimes.com](mailto:kervin@seattletimes.com)*

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Wednesday, June 22, 2005, 12:00 A.M. Pacific

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## 6 accused of casting multiple votes

By Keith Ervin  
*Seattle Times staff reporter*

Criminal charges have been filed against six more King County voters for allegedly casting more than one ballot under a variety of circumstances in last November's election, prosecutors said yesterday.

Two defendants, William A. Davis of Federal Way and Grace E. Martin of Enumclaw, were accused of casting absentee ballots in the names of their recently deceased spouses, Sonoko Davis and Lawrence Martin, respectively.

A mother and daughter were also charged with casting a ballot in the name of the mother's dead husband. The mother, Harline H.L. Ng, and her daughter, Winnie W.Y. Ng, both of Seattle, signed their names as witnesses to the "X" marked on the ballot of Jacob Ng, who had died in February 2004.

Jared R. Hoadley of Seattle was accused of casting a ballot in the name of Hans Pitzen, who had lived at the same Seattle address as Hoadley and who died last May.

Dustin S. Collings, identified as a homeless Seattle resident, was charged with casting two ballots, both using the alias of Dustin Ocoilain, a name that was listed twice on the voter-registration rolls.

The defendants are charged with repeat voting, a gross misdemeanor that carries possible jail time of up to one year and a fine of up to \$5,000.

Election officials asked prosecutors to investigate the voters after news reporters and a blogger reported that they may have voted twice. The voters will be arraigned July 5 in King County District Court.

Two other voters previously received deferred sentences — and avoided jail time — after they pleaded guilty to charges of repeat voting.

The King County Sheriff's Office is investigating several other cases, prosecutors reported yesterday. The investigations resulted from the intense scrutiny surrounding the governor's election in which Democrat Christine Gregoire defeated Republican Dino Rossi by 129 votes after he narrowly won two earlier vote counts.

After the November election, prosecutors also successfully challenged the voter registrations of 648 felons whose right to vote had not been restored.

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## Man charged with voting twice says he filled out extra card by mistake

By **GEORGIA PABST**  
[gpabst@journalsentinel.com](mailto:gpabst@journalsentinel.com)

Posted: Sept. 21, 2005

A 25-year-old Milwaukee man charged with voting twice in the Nov. 2 presidential election said Wednesday he filled out two on-site voter registration cards that day by mistake, but only voted once.

Testifying in his own defense, Enrique Sanders said he couldn't remember for whom he voted, though he knew it wasn't President Bush.

After irregularities appeared in Milwaukee's vote, a joint state and federal investigation led to illegal voting charges against more than a dozen people. Sanders is one of the first to go to trial.

"There's no evidence he was paid to vote and he's not even sure who he voted for," his attorney, Brian Mullins, told jurors during closing arguments. He said Sanders has a learning disability and has trouble reading and remembering.

But Assistant U.S. Attorney Richard Frohling asked jurors, if Sanders didn't care about the election, why did he wait in line at the Franklin Pierce School polling place for more than 1 1/2 hours to cast his ballot?

"He wanted to make sure his vote counted and it was important enough to make his vote count twice," he said.

Frohling said Sanders' two registration cards each show different numbers. Election officials testified that a number means a person was issued a ballot.

But Sanders insisted he did not vote twice. He said he went to the poll with his girlfriend, but the line was long so he took her home and returned alone.

Tiffany Harrell testified that she and Sanders got registration cards, and she said she thought Sanders put the card in the visor or door of his car.

Sanders said when he returned, he filled out one registration form in line with the address 1133 W. Highland. But there is no address and he actually had lived at 1133 N. 18th St.

He said when he gets rushed or is in a crowd, he tends to make mistakes. At the desk, he said, he told the poll worker he made a mistake and filled out another card. He said he didn't know what the worker did with the other card and said it might not have been destroyed as it should have been.

But Milwaukee police officers on said voting cards indicated that Sanders had been given two ballots.



Frohling said Sanders originally told police he couldn't explain why there were two registration cards. Milwaukee Police Officer Neil Saxton testified that Sanders' demeanor was different, too: "He spoke more clearly and concisely and didn't act like he didn't understand."

The jury is expected to decide the case today. Sanders faces up to five years in prison and a \$10,000 fine if convicted.



Earlier in the day, Kimberly Prude was convicted by a different federal jury of voting in the election. She was an ineligible felon at the time.

### Elections Investigation




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From the Sept. 22, 2005, editions of the Milwaukee Journal Sentinel  
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

02-9901

Original URL: <http://www.jsonline.com/news/metro/aug05/350183.asp>

WS

# Nothing points to fraud in 9 double voting cases

## But U.S. attorney expects other charges in election investigation

By GREG J. BOROWSKI  
[gborowski@journalsentinel.com](mailto:gborowski@journalsentinel.com)

Posted: Aug. 22, 2005

Investigators found no evidence of fraud in nine cases of potential double voting cited this month by the state GOP, but U.S. Attorney Steven Biskupic indicated Monday the ongoing investigation will likely lead to more charges.

The state Republican Party used U.S. Postal Service change of address records to track voters from city to city.

At an Aug. 9 news conference, party officials said that they had found nine cases where people were listed as having voted in the November presidential election in Milwaukee while also casting ballots in Chicago, Madison or Minneapolis.

Biskupic said investigators reviewed each case cited and found assorted clerical errors and other inconsistencies, but no fraud.

He is leading the ongoing investigation with Milwaukee County District Attorney E. Michael McCann. They launched the probe after the Journal Sentinel found widespread irregularities in the vote, including thousands more votes tallied in Milwaukee than people recorded as having voted.

Biskupic and McCann have said more than 200 felons illegally voted in the city while still on probation or parole. At least another 100 people voted fraudulently, including voting twice, from non-existent addresses or voting in the name of a dead person.

So far, 10 felons have been charged with voting illegally. Two others have been charged with double voting. In addition to those federal cases, two were charged in Milwaukee County Circuit Court with falsifying voter registration cards. None of the cases has gone to trial.

"There still is no evidence of a widespread conspiracy," Biskupic said. "But there still is plenty of evidence of double voting and the like."

The GOP highlighted its allegations on the same day Republican lawmakers sent to Gov. Jim Doyle a bill that would have required voters to show a photo ID at the polls. Doyle quickly vetoed the bill, as he had done with two previous versions of the measure.

Doyle spokeswoman Melanie Fonder said Monday that the Republicans were grandstanding with their allegations of fraud.



"It's very clear this was just politics and not about real election reform," she said.

### Amendment possible

After Doyle's veto, Republican lawmakers said they are now considering working to put a photo ID requirement on the ballot as a proposed constitutional amendment, which would bypass the governor. Such an amendment would require passage in two sessions of the Legislature and then be approved in a statewide vote. Backers say it is needed to help curb fraud and tighten up a system that is among the most open in the nation. Critics say the bill would disenfranchise the elderly and the poor.

Doyle has indicated he would back a requirement that voters show an ID, such as a utility bill, but has balked at the GOP demand that it be a

<http://www.jsonline.com/news/metro/aug05/350183.asp?format=print>

<b>Election Investigation</b>

<b>Quotable</b>
<p>“ There still is no evidence of a widespread conspiracy. ”</p> <p>- U.S. Attorney Steve Biskupic (left), at a news conference in May with District Attorney E. Michael McCann</p>
<b>Archived Coverage</b>
<p> <b>Archive:</b> Previous coverage of the investigation into Milwaukee's Nov. 2, 2004 election</p>

029902

photo ID.

At its news conference, the GOP said it had nine cases of apparent double voting but refused to provide details to the media. The party's news conference was held outside a home on Milwaukee's east side.

The Journal Sentinel reviewed voting records at that address and found three people recorded as voting: Stuart and Gayle Schenk and their son, Joseph. The Schenks told the newspaper that Joseph had moved to Chicago to join the Franciscan order of the Roman Catholic Church and did not vote here.

They could not be reached for comment Monday.

## Poor recordkeeping

In a letter issued Monday, Biskupic's office outlines what it found in each of the nine cases.

Six of the names were incorrectly included in the city Election Commission's database of Nov. 2 voters because of clerical errors.

For instance, names were not recorded correctly in polling place logbooks. Or the wrong name was recorded when names from the books were later scanned into a computer.

In the other three cases, the letter says, the individuals voted only in Milwaukee. For instance, someone with a similar name but different birth date voted in the other city.

The letter underscores the level of recordkeeping problems in the Election Commission office.

During its investigation, the newspaper found hundreds of cases where people were listed in the database as voting twice, something city officials blamed on a computer glitch. The newspaper also found dozens of cases where the number of voters recorded in logbooks was different from the votes counted in the precinct.

"These raised a flag with us because of everything that has gone on over there," said Rick Wiley, executive director of the state Republican Party. "We're going to continue our investigation into what we consider a mess over there."

Wiley said the party last week sent 10 more names of potential double voters to investigators.

He also said before holding its news conference, the party had sent 49 cases of potential double voting within the city of Milwaukee to investigators. Of those, Wiley said, investigators had indicated 48 of the cases were not cases of fraud, while the other is being looked at as a fraudulent vote.

"The governor continues to blame this on clerical errors," Wiley said. "But the investigation has made it clear. People have been charged with voting fraudulently in this election."

Sue Edman, the new executive director of the city Election Commission, said she is working to clean up the system to cut down on clerical problems.

From the Aug. 23, 2005, editions of the Milwaukee Journal Sentinel  
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).


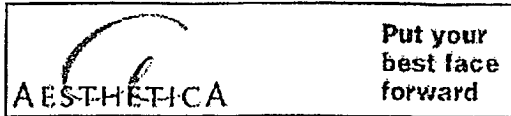
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029903




Fraud

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**Charge reduced in voter fraud**

College student gets probation for casting 2 ballots

By Dan Wilson  
Post-Crescent staff writer

APPLETON — A college student who voted in two cities last spring received probation Monday after a felony charge was reduced to a misdemeanor in a plea agreement.

Outagamie County Circuit Judge Dee Dyer placed Michael R. Howard of Appleton on probation for one year and ordered him to perform 150 hours of community service. Dyer also ordered the record of Howard's conviction expunged after he successfully completes probation.

Howard, 20, 1036 E. Moorpark Ave., was charged with felony voter fraud, but Assistant Dist. Atty. John Daniels told Dyer the facts justified amending the charge to making a false statement on a voter registration form, a misdemeanor.

Howard voted in the nonpartisan election last April by absentee ballot in Appleton and in person in Eau Claire, where he attends college.

"He did not vote twice for the same individuals," said Daniels. "Therefore, the state does not believe at his young age he should be labeled a felon for the rest of his life."

According to Daniels, the elections in both cities were local, and there were no state or national issues on the ballot.

Dyer asked Howard, who has good grades, how he could contemplate voting twice in the same election.

"I became aware of the city council elections and not thinking, I did it," Howard said.

Dan Wilson can be reached at 920-993-1000, ext. 304, or by e-mail at [dwilson@postcrescent.com](mailto:dwilson@postcrescent.com)

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imagination at work

Jeannie Layson /EAC/GOV  
05/09/2007 04:45 PM

To ggordon@mcclatchydc.com  
cc  
bcc  
Subject IG review of EAC

Mr. Gordon,

Per our conversation, EAC chair Donetta Davidson asked our IG to review the circumstances surrounding both the voter ID and vote fraud and voter intimidation projects. Go here for more info, which includes some of the inquiries we've gotten from Congress about these projects.

I'm already working on your request, and I will keep you apprised of my progress. Call if you need anything or have questions about the material you just picked up.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029905

Jeannie Layson /EAC/GOV  
05/09/2007 01:28 PM

To "Gordon, Greg"  
<ggordon@mcclatchydc.com>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Your FOIA request

No problem. I can't WAIT to get the new request. See you later this afternoon.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
"Gordon, Greg" <ggordon@mcclatchydc.com>



"Gordon, Greg"  
<ggordon@mcclatchydc.com>  
>  
05/09/2007 01:26 PM

To jlayson@eac.gov  
cc  
Subject RE: Your FOIA request

I'll get the new request to you this afternoon and will phone you before walking over. Thanks, Jeanne.

Greg Gordon  
National Correspondent  
McClatchy Newspapers Washington Bureau  
202-383-0005  
[ggordon@mcclatchydc.com](mailto:ggordon@mcclatchydc.com)

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**From:** jlayson@eac.gov [mailto:jlayson@eac.gov]  
**Sent:** Wednesday, May 09, 2007 12:25 PM  
**To:** Gordon, Greg  
**Subject:** Your FOIA request

Hello Greg,  
Just following up from our conversation yesterday -- your FOIA request regarding emails b/w staff and commishes and Tova Wang and Job Serebrov is ready. I can have someone walk it over if you want. Also, don't forget to send your other request, which as I understood it is emails/correspondence b/w DOJ and EAC commissioners and staff regarding vote fraud and voter intimidation. If that's the case, I'll go ahead and start pulling this info.

Thanks. If you need to call me my number is 202-566-3103.

029906

Jeannie Layson  
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[www.eac.gov](http://www.eac.gov)

029907

Jeannie Layson /EAC/GOV  
05/04/2007 02:36 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Wendy Weiser

Just wanted to let you know that I called her today to tell her that I would be sending some responsive documents per her FOIA request about the vote fraud project that were not included in my previous response. Mostly these are emails that were not provided to me before, as well as a few memos and letters that were also not provided.

She said she was getting ready to send an appeal based on the belief that I did not provide her all of the emails and relevant letters, memos, and other documents. She noted that most of the emails involved only two EAC staffers. I explained that the new documents I was sending would include emails from additional staffers. However, I believe the bulk of what she has includes CCs of other staffers, so another search would only turn up duplicates, but I will verify that.

Wendy also asked about all of the attachments in the emails. I told her it would have taken many months to print all of those out and make the determination whether they were releasable under FOIA. She offered to identify the attachments they would like to see, and I told her that would be helpful. She also noted that in my letter, I estimated that she was received about 1,500 pages. She said they counted and there were only 800. I told her I estimated the page count, and she accepted that.

I asked her if she would consider holding off on the appeal until she received the additional documents, as they may satisfy her appeal. She agreed, and I told her I would send everything by the end of next week. She also requested that I send a scanned copy. I explained that only one of our scanners was working, and that it did not have the capacity to scan huge files.

I will keep you apprised...

Jeannie Layson  
U.S. Election Assistance Commission  
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Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029908

Jeannie Layson /EAC/GOV

05/04/2007 10:12 AM

To Curtis Crider/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC

bcc

Subject FOIA requests

Curtis,

In reference to FOIA requests about the vote fraud and voter intimidation and voter ID projects, and whether EAC should respond while the Office of Inspector General reviews circumstances surrounding these projects, I have come to a decision regarding this issue. After speaking with EAC's general counsel and reviewing your response to the chair's questions about communication during your review, I conclude that as EAC's FOIA officer, I must continue to follow the law and respond to FOIA requests regarding these topics. I will certainly provide copies of my responses to your reviewers and answer any questions you have. However, per your recommendation, I will decline answering questions from the media and the public until your review is complete. Please let me know if you have questions, and I appreciate your cooperation and counsel in this matter.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029909

**Deliberative Process  
Privilege**

Jeannie Layson /EAC/GOV  
05/02/2007 12:25 PM

To jthompson@eac.gov  
cc  
bcc  
Subject brennan center letter

Would you take a look at this and see if the language is okay? This is about sending her the emails and docs that weren't given to me by staff when she submitted her FOIA request.



Brennan 5-2-07.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029910



**U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005**

May 2, 2007

Ms. Wendy R. Weiser  
Deputy Director, Democracy Program  
Brennan Center for Justice  
161 Avenue of the Americas, 12<sup>th</sup> Floor  
New York, NY 10013

Dear Ms. Weiser:

This letter is in reference to your Freedom of Information Act (FOIA) request received by the U.S. Election Assistance Commission (EAC) on November 13, 2006. The request sought certain agency records concerning two agency draft reports, *The Voter Fraud and Intimidation Report* and *The Voter Identification Report*. Specifically, the request sought: (1) “the report on voter identification prepared by the Eagleton Institute of Politics and the Moritz College of Law,” (2) “the report on voter fraud and voter intimidation prepared by Tova Wang and Job Serebrov,” (3) The voter identification and voting fraud report requests for proposals and contracts, and (4) communications relating to the above reports between the EAC and Eagleton Institute of Politics, the Moritz College of Law, Ms. Tova Wang, Mr. Job Serebrov, or other third parties.

On December 12, 2006, we provided a partial response to your request regarding items (1) through (3) above. In regard to item (4), on March 29, 2007, we provided copies of the responsive documents (approximately 1,500 pages). In reference to item (4), an estimated 300 pages of e-mails were withheld because the information in these e-mails is pre-decisional and protected by the Deliberative Process Privilege.

Since our March 29, 2007 response, I have found responsive emails and documents in reference to your original request that were not included the EAC’s responses. For your information, I have attached these documents.

Please let me know if I can be of further assistance, or if you have questions regarding this information.

Sincerely,

Jeannie Layson  
Director of Communications  
U.S. Election Assistance Commission

Attachments:

1. Responsive Documents

029911



Jeannie Layson /EAC/GOV  
04/19/2007 05:03 PM

To ghillman@eac.gov  
cc  
bcc  
Subject info

See this link from her NPR interview: <http://www.npr.org/templates/story/story.php?storyId=9536101>

## Voting rights and wrongs

By Donna Brazile

THE WASHINGTON TIMES

Published April 16, 2007

Just when civil rights advocates were celebrating recent advances in restoring the voting rights of 5.3 million Americans prohibited from voting in several states because of their felony convictions, along comes the news that the Bush administration has been playing politics with meaningful electoral reform.

Geez, can't they focus on governing without engaging in partisan warfare?

The New York Times has reported that the Election Assistance Commission, a federal agency charged with administering federal elections, "played down the findings of experts who concluded last year that there was little voter fraud around the nation." According to the New York Times' review, the "original report on fraud cites 'evidence of some continued outright intimidation and suppression' of voters by local officials, especially in some American Indian communities, while the final report says only that voter 'intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation.' "

Just why would the EAC suppress or alter a report that could have helped restore citizens' confidence in our electoral system? Did someone pressure them to disown reports they commissioned? If so, we need to find the guilty parties and bring yet another shameful episode of partisanship to public attention.

As the Times notes, this issue played a "significant role" in the Bush administration's "firing of eight United States attorneys, several of whom, documents now indicate, were dismissed for being insufficiently aggressive in pursuing voter fraud cases." Perhaps disgraced Attorney General Alberto Gonzalez will have the decency to respond to these allegations next week when he testifies on Capitol Hill.

The Election Assistance Commission, according to its own mission statement, is supposed to be a clearinghouse for all "matters that affect the administration of federal elections," providing "information and guidance with respect to laws, procedures and technologies affecting the administration of federal elections." Fair enough, but why did they shove aside a report that could have provided timely guidance to members of Congress trying to address so-called voter fraud by imposing restrictive voter-ID requirements?

The EAC not only refused to accept the reasoned conclusion of its bipartisan consultants, they also refused to release those findings at a time when doing so would have discounted claims of rampant voter fraud that were the justification for the restrictive voter ID law passed last year by the Republican-controlled House of Representatives. Thank God the Senate had no appetite to

029912

take up a similar measure being pushed to address the phantom of voter fraud.

Here we approach another major electoral season and the agency in charge of helping states reform their electoral practices has lost its credibility. Loyola Law professor and election expert Richard Hansen have written that the "EAC needs to remain a credible broker and cannot be timid by what it finds." Mr. Hansen believes that if the evidence supports one side of the debate, that is "not a reason to disown a report and start over." Hmmmm, unless it's about politics and helping one side gain an electoral advantage.

Since the 2000 presidential election, states have moved to enact stringent voter ID requirements. According to election experts, as of the November 2006 election, 24 states had enacted some form of voter identification law, up from 11 in 2000.

While state and federal courts have thrown out some restrictive and punitive photo ID laws on the grounds they may lead to disenfranchising poor, elderly or minority citizens otherwise eligible to vote, the drumbeat still rages to put in place more punitive laws. The motives are simple: Suppress the turnout of eligible citizens who may not embrace the political priorities of one of the major political parties. Shameful.

No citizen should vote twice, and felons and others seeking to have their voting rights restored must remain patient while the wheels of justice turn in their favor. But, under the guise of people "stuffing ballot boxes," allowing the dead to vote or undocumented workers attempting to claim citizenship, Republican lawmakers have begun to erect new laws that could severely curtail the right of all eligible citizens to vote and have those votes counted accurately.

Perhaps it's time we all put aside partisan consideration and agree that no eligible citizen should have to pay to vote. As many civil rights advocates will tell you, proof of citizenship requirements can place an undue financial burden on voters. I know because many of my family members who had all their possessions washed away during Hurricane Katrina are still scurrying to replace passports, birth certificates and other proof of citizenship, and the expense is shocking.

We should also agree that no eligible citizen should face intimidation by partisan poll workers or be asked to produce ID at the polling place when state law only requires first-time voters and those who did not list an ID number on their registration forms to do so. It's wrong, and it's illegal.

The Justice Department and the Election Assistance Commission, you are now on notice that civil rights groups are watching your every step, your partisan reports and, yes, your role in destroying one of the most important ingredients of our democracy: the right of all citizens regardless of race, gender, disability, age or class to participate in the electoral process.

Donna Brazile is a political commentator on CNN, ABC and National Public Radio and former campaign manager for Al Gore.

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029913

Jeannie Layson /EAC/GOV  
04/19/2007 10:32 AM

To EAC Personnel  
cc  
bcc  
Subject Today's News (04-19-07)

**National**

**Carnahan urges time , resources to deal with election laws** (Comm. Hillman quoted.)  
**Lawmakers call for e -voting paper trails** (Comm. Hillman quoted.)  
**Commission urges caution on election reform** (Comm. Hillman quoted.)  
**Rodriguez elected EAC vice -chair**  
**Rodriguez elected EAC vice -chair** (NALEO press release)  
**The fraudulence of fraud** (Rep. Serrano says our report could be the next Watergate, says WH may have had a role in editing report.)  
**A selective view of fraud** (Says WH edited our report. I have requested a correction.)  
**Voter ID laws need measured implementation** (EAC fraud report)  
**What the Senators should ask Gonzalas** (EAC fraud report mention)  
**A really important homework assignment** (Action alert to notify the public about DRE dangers, including contacting me at EAC.)  
**Millender-McDonald reveals few details**

**National**

**Carnahan urges time , resources to deal with election laws**  
By SAM HANANEL, The Associated Press  
Apr 18, 2007 8:07 PM (13 hrs ago)

**WASHINGTON** - States will need time and resources to comply with any changes that Congress might order to electronic voting systems, Missouri Secretary of State Robin Carnahan told a congressional panel on Wednesday.

"Obviously elections are run locally," Carnahan told the House Subcommittee on Information Policy, the Census, and the National Archives. "If you all take over the election process, that's a big change in our country and it will take money to do that."

The hearing examined the reliability and security of electronic voting systems that have been put into place across the country since the failure of paper ballots was exposed in the 2000 election.

Subcommittee chairman William Lacy Clay, D-Mo., said he wants Congress to require a paper trail to back up electronic voting machines and make the process of testing election software and verifying its security coding more transparent.

Clay cited results from the 2006 election that show some electronic voting systems still produced unreliable results, causing distrust among voters.

"It is absolutely vital that we utilize technology that provides an independent, auditable voting record that can be verified by election officials," Clay said.

Carnahan, a Democrat, said lawmakers need to give states a reasonable time frame to comply if Congress implements any changes, and guarantee full funding for any mandates that come down. She also urged lawmakers to gather input from state and local officials before taking action.

Carnahan described Missouri's elections as "fair, accurate and secure," and said the state's use of new optical scan and touch-screen voting systems was generally a success.

But there were some problems, such as long lines that formed when some polling places ran out of

029914

ballots. She said there is a need for more training for poll workers unfamiliar with the new technology.

Missouri is one of 27 states that already require paper records for electronic machines.

Gracia Hillman, a member of the U.S Election Assistance Commission, told Clay that only Congress has the authority to order nationwide use of paper voting verification.

Depending on what Congress does, Hillman said, at least 180,000 machines around the country would need to be replaced or upgraded. That could be a "recipe for colossal confusion" if lawmakers try to enact such legislation with only a year-and-a-half before the 2008 election, she said.

Clay also grilled Hillman about reports that EAC officials rewrote the findings of a government-funded report on voter fraud to downplay the pervasiveness of problems with electronic systems. Clay said he has concerns the EAC is improperly politicizing its work.

Hillman said changes in the report drafted by researchers at Rutgers University were made because some conclusions were not supported by the data.

"I do not believe that the EAC could have reached agreement on the conclusions offered by those researchers without being allowed to validate those conclusions," Hillman said.

Avi Rubin, a computer science professor at Johns Hopkins University, testified that an electronic voting system without a backup paper receipt cannot be properly audited.

#### **Lawmakers call for e-voting paper trails By Grant Gross , IDG News Service**

April 18, 2007

U.S. lawmakers on Wednesday called for electronic voting machines to include paper trail backups, while a government auditor said better security measures for the machines are needed.

A still-contested 2006 election for the U.S. House of Representatives in Florida's 13th district is a "prominent example of how, in some instances, electronic voting systems have produced unreliable results, raising concerns among voting-system experts and causing distrust among voters," said Representative William Lacy Clay, chairman of the House Information Policy, Census, and National Archives Subcommittee.

In the Florida House election, more than 18,000 voters failed to cast ballots on e-voting machines, and the Republican candidate won by fewer than 400 votes.

Clay, from Missouri, and other Democrats called for paper trail printouts to be required as a way to audit results from touchscreen DRE (Direct Recording Electronic) machines. But Gracia Hillman, a member of the U.S. EAC (Election Assistance Commission), warned Congress not to rush into paper-trail requirements.

Hillman avoided taking a position on paper trail ballots during a subcommittee hearing. But at least 180,000 DREs across the U.S. would have to be upgraded or replaced if Congress required paper trails, she said.

"When you combine the introduction of new equipment, earlier primaries, and the enormous tasks of recruiting and training poll workers to meet a presidential election year deadline -- which is only a year and a half from now -- you have all of the ingredients of a recipe for colossal confusion," Hillman said.

Robin Carnahan, secretary of state for Missouri, also called on Congress to allow reasonable time frames for changes in e-voting requirements. "Don't do things that create expectations but can't be met by local

election officials," she said.

Carnahan said the 2006 election in Missouri was "fair, accurate and secure." Voters there used optical scan and DRE machines with paper trails.

Other lawmakers seemed skeptical of the need for paper trails. Representative Bill Sali, an Idaho Republican, asked Hillman and Randolph Hite, director of information technology architecture and systems for the U.S. GAO (Government Accountability Office), if they knew of any e-voting machines that had been hacked during an election. Both said they were not aware of any.

But Hite called on state and local elections officials to pay more attention to e-voting security and machine life cycle.

Several groups have "raised significant concerns about the security and reliability of electronic voting systems," Hite said. "Many of these security and reliability concerns are legitimate and thus merit the combined and focused attention of federal, state, and local authorities."

In an extensive GAO review, the agency found that many jurisdictions did not use the most current voting system standards, and many do not consistently monitor election performance. Voting-machine best practices were implemented to "varying degrees," he said.

Security measures for e-voting machines "ranged from rigorous to ad hoc," Hite added. He called on the EAC to work with local and state election authorities to strengthen security measures.

#### **Commission urges caution on election reform**

National Journal's Congress Daily AM

An official with the commission charged with overseeing the administration of federal elections urged House lawmakers Wednesday to proceed with caution as they consider sweeping electoral reform legislation.

Election Assistance Commission member Gracia Hillman told the House Oversight and Government Reform Information Policy Subcommittee that earlier primary elections, new equipment and increased poll-worker training demands already stand to complicate the administration of federal elections next year, *National Journal's Technology Daily* reported.

During a hearing on electronic voting machines, she said lawmakers are right to question the use of certain e-voting machines. A measure sponsored by Rep. Rush Holt, D-N.J., would require all e-voting machines to be backed up by paper trails.

But Hillman said Congress needs to be aware of the confusion that extensive e-voting upgrades might cause. She also urged the panel to consider other electoral issues such as voter registration, participation and disenfranchisement.

#### **Rodriguez elected EAC vice -chair**

VoteTrust USA

Former Denver City Council President Rosemary E. Rodriguez today was elected vice chair of the U.S. Election Assistance Commission (EAC) during a public meeting.

As vice chair, she will work with EAC Chair Donetta Davidson as part of the bipartisan leadership team at the commission to set priorities and communicate EAC initiatives.

"My foremost conviction is that all eligible voters should be empowered with simple, unfettered and uncomplicated access to registration and to the voting booth" said Rodriguez. "I look forward to working with my colleagues as we seek practical means to improve elections in this country in ways that most benefit the voters."

Vice Chair Rodriguez joined the EAC in March. She was nominated to EAC by President Bush in 2006 and confirmed by the U.S. Senate in February. She will serve until December 12, 2007, filling the remaining term of Ray Martinez, who resigned in August 2006.

She served on the Denver, Colorado City Council for three years, and was its president from 2005 to 2006. She was director of Boards and Commissions for the mayor's office from 2002 to 2003 and a clerk and recorder for the City and County of Denver from 1997 to 2002. In 1997 she was acting director of the Denver Election Commission where she supervised city elections. She has been active in numerous grass roots civic and voter advocacy organizations, including the Colorado Voter Initiative where she co-chaired a statewide initiative to allow Election Day voter registration. She was also a co-founder and chair of Latinos Vote, a voter registration project to register Latino voters and provide non-partisan election information to the Latino community.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

Rosemary Rodriguez elected EAC vice-chair  
NALEO Press Release

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**Los Angeles, CA** - The National Association of Latino Elected and Appointed Officials (NALEO), the nation's preeminent Latino leadership organization, congratulates Commissioner Rosemary Rodriguez on her election today to serve as Vice-Chair of the U.S. Election Assistance Commission (EAC). Commissioner Rodriguez, who is a former NALEO Educational Fund Board member, joined the EAC in March 2007, and was elected Vice-Chair by her fellow Commissioners at a meeting held in Kansas City, Missouri. The EAC is an independent bipartisan commission created to provide guidelines and resources to states for federal election reform.

Commissioner Rodriguez comes to her position with over a decade of experience in public service where she gained extensive expertise with many different aspects of election administration. In the 1990's, she was actively involved in educating community members about the need for representative districts during redistricting, and in 2001, she was appointed to the Colorado Reapportionment Commission and served as its Chair. For several years, she served as the City of Denver's Clerk and Recorder, where she was responsible for supervising candidate filings, voter registration and the dissemination of official election information. As Clerk and Recorder, she was a member of Denver's Election Commission, which directs city-wide elections.

Commissioner Rodriguez also served as a member of the Denver City Council since 2003, and in 2005, she was elected by her peers to serve a one-year term as Council President. Through her experiences in public service, Commissioner Rodriguez developed a thorough understanding of the challenges that voters face in gaining access to the electoral process. As a board member of the NALEO Educational Fund, she was involved in efforts to further Latino political participation through the organization's U.S. citizenship promotion work and non-partisan voter engagement project *Voces del Pueblo*.

"Rosemary Rodriguez brings a wealth of knowledge on election issues to the Election Assistance Commission," said John Bueno, NALEO President and former President Pro-Tem for the City of Pontiac, Michigan. "Throughout her career, she has demonstrated a strong commitment to ensuring that all voters

have a voice on Election Day, and she will provide the Commission with invaluable perspectives and expertise. NALEO congratulates Commissioner Rodriguez on her election," concluded Mr. Bueno.

The EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA).

It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource information regarding election administration. In addition to Commissioner Rodriguez, the members of the EAC are Chair Donnetta Davidson, Gracia Hillman, and Caroline Hunter. Commissioner Rodriguez succeeds former Commissioner Raymundo Martinez III, who resigned in August 2006.

### **The fraudulence of fraud**

By Joel Bleifuss  
In Our Times

On April 6, 2006, in Washington, D.C., Karl Rove gave a speech to the Republican National Lawyers Association and issued this dire warning:

We are, in some parts of the country, I'm afraid to say, beginning to look like we have elections like those run in countries where the guys in charge are, you know, colonels in mirrored sunglasses. I mean, it's a real problem, and I appreciate all that you're doing in those hot spots around the country to ensure that the ballot--the integrity of the ballot--is protected, because it's important to our democracy.

When Rove talks about protecting "ballot integrity," that is shorthand for disenfranchising Democratic Party voters. Over the last several years, the Justice Department, with the help of White House

operatives, has sought to boost GOP electoral fortunes by orchestrating a national campaign against voter fraud. But the administration overreached on Dec. 7, when President George W. Bush fired eight U.S. attorneys, a political scandal that some say could become this president's Watergate.

When Republicans talk about *voter* fraud they are referring to illegal voting by individuals, as opposed to *vote* fraud--systematic attempts to steal an election by an organized group of partisans. This emphasis on voter fraud has convinced eight states to pass laws requiring voters to present official photo identification in order to cast a ballot--laws that studies have shown suppress Democratic turnout among voters who are poor, black, Latino, Asian-American or disabled.

Understanding that one way to win closely contested elections is to keep Democratic voters away from the polls, the Republican Party has tried to stoke public fears of voter fraud. On Feb. 15, 2005, the U.S. Senate Republican Policy Committee issued a report, "Putting an End to Voter Fraud," which said, "Voter fraud continues to plague our nation's federal elections, diluting and canceling out the lawful votes of the vast majority of Americans." To remedy the situation, the Senate Republicans advised Congress to "require that voters at the polls show photo identification."

But voting experts maintain that voter fraud is not a national problem. In March, Lorraine C. Minnite, a professor of political science at Columbia University, released "The Politics of Voter Fraud," a report she prepared for Project Vote, an advocacy group based in Arkansas. She writes:

The claim that voter fraud threatens the integrity of American elections is itself a fraud. It is being used to persuade the public that deceitful and criminal voters are manipulating the electoral system. ... The exaggerated fear of voter fraud has a long history of scuttling efforts to make voting easier and more inclusive, especially for marginalized groups in American society. With renewed partisan vigor, fantasies of fraud are being spun again to undo some of the progress America has made lowering barriers to vote.

This is borne out by a study from the Eagleton Institute of Politics at Rutgers University, which found that in the 2004 election, voters in states that required documentation of identity were 2.7 percent less likely to vote than voters in states where documentation was not required. Specifically, the study, commissioned by the U.S. Election Assistance Commission, found that Latinos were 10 percent less likely to vote, Asian-Americans 8.5 percent less likely to vote and blacks 5.7 percent less likely to vote.

What's more, despite GOP claims to the contrary, voter fraud is a very rare occurrence. In 2002 the Justice Department established the Ballot Access and Voting Integrity Initiative to ferret out fraudulent voters. On Oct. 4, 2005, Attorney General Alberto Gonzales, with great fanfare, proclaimed, "We've made enforcement of election fraud and corrupting offenses a top priority." Yet according to an April 12 *New York Times* article, only 120 people have been charged with the crime over the past five years, leading to 86 convictions. Furthermore, the *Times* noted, federal attorneys say that most of the transgressions have been mistakes by immigrants and felons who simply misunderstood eligibility requirements.

The extent of voter fraud is further complicated by the fact that earlier this year the Election Assistance Commission changed the conclusions of a report it had commissioned. The original report by outside election experts concluded, "There is widespread but not unanimous agreement that there is little polling place fraud." The commission deleted that sentence and replaced it with, "There is a great deal of debate on the pervasiveness of fraud."

Rep. José Serrano (D.-N.Y.), who chairs the House Appropriations subcommittee that oversees the commission, is disturbed by this apparently politically motivated substitution. He told *In These Times*:

This possibly could be another Watergate. We have to ask the questions, "Why was this report doctored, and how does this play into the larger picture of voter suppression and intimidation?" By directing public attention to voter fraud you divert attention from the fact that Americans in certain communities are not able to cast their votes properly and that their votes are not being counted. Is this something that this small new agency thought of by themselves or did they get marching orders from somewhere else, perhaps as far up as the White House?

**Firing prosecutors**

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It appears that, under Rove's direction the White House has been planning to use U.S. attorneys to fan national fears of voter fraud. In his speech to the GOP lawyers, Rove listed 11 states that would play a pivotal role in the 2008 elections. Since 2005, Bush has appointed new U.S. attorneys in nine of those states: Florida, Colorado, Wisconsin, Minnesota, Iowa, Michigan, Nevada, Arkansas and New Mexico.

What's more, the firings of U.S. attorneys in New Mexico, Arkansas and Washington appear directly related to this Republican plan to exploit the issue of voter fraud and suppress Democratic turnout.

In Arkansas, Bush fired a sitting U.S. attorney in order to appoint Rove protégé Tim Griffin. (See "The Talented Mr. Griffin" by Greg Palast on page 31.)

In Washington, fired U.S. Attorney John McKay had refused to prosecute alleged voter fraud in the 2004 Washington governor's race, in which Democrat Chris Gregoire beat Republican Dino Rossi by 129 votes.

On March 6, McKay testified before the Senate that after the election Republicans pressured him to open an investigation. He said his office had examined the allegations of voter fraud and decided there was not enough evidence to pursue a case.

"Had anyone at the Justice Department or the White House ordered me to pursue any matter criminally in the 2004 governor's election, I would have resigned," McKay told the *Seattle Times*. "There was no evidence, and I am not going to drag innocent people in front of a grand jury."

In New Mexico, David C. Iglesias was equally suspect in the eyes of the GOP. Recall that in 2000, Gore beat Bush by 377 votes in New Mexico. Consequently, in 2004, Democrat-affiliated groups initiated voter registration campaigns in New Mexico. As a result, two boys, age 13 and 15, received voter cards in the mail. Iglesias responded by setting up a bipartisan task force to investigate. This didn't satisfy attorney Mickey D. Barnett, who represented the 2004 Bush-Cheney campaign in New Mexico. He told Iglesias he should bring federal charges against a canvasser who forged their signatures, which he refused to do.

In a *New York Times* op-ed, Iglesias wrote:

What the critics, who don't have any experience as prosecutors, have asserted is reprehensible--namely that I should have proceeded without having proof beyond a reasonable doubt. The public has a right to believe that prosecution decisions are made on legal, not political grounds.

#### **Manufacturing voter fraud**

The issue of fraudulent voters undermining American democracy did not spontaneously erupt. To promote national concern about voter fraud, in March 2005 GOP operatives with ties to the White House established a 501(c)4 organization called the American Center for Voting Rights Legislative Fund (ACVR). The group went public by establishing a Web site, ac4vr.com. (The site has since been taken down for unknown reasons.)

According to its 990 tax forms, ACVR is based in Midlothian, Va., and its executive director is Robin DeJarnette, who is also the founder and executive director of the Virginia Conservative Action PAC. However, according to the registration form for its Internet domain name, the group's address is a mailbox at a UPS Store in Dallas. The chairman of ACVR is Brian Lunde, a former Democratic National Committee official from Texas, who in 2004 was head of Democrats for Bush.

ACVR specializes in issuing studies that purport to document a host of voter fraud cases, like the report titled: "Democrat operatives far more involved in voter intimidation and suppression in 2004 than Republicans."

On March 21, 2005, four days after ACVR went public, Rep. Bob Ney (R-Ohio), then chair of the Committee on House Administration, opened hearings on 2004 election irregularities. One person who testified was ACVR National Counsel Mark "Thor" Hearne II, who described himself as "a longtime advocate of voter rights and an attorney experienced in election law." In the aftermath of the 2000

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presidential campaign, Hearne was dispatched to Florida as a Republican observer in Broward County's manual recount, and in 2004 he worked as the national general counsel for Bush/Cheney '04 Inc.

In his testimony, Hearne described ACVR as "committed to defending the rights of voters and working to increase public confidence in the fairness of the outcome of elections." And he submitted to the committee a copy of the ACVR's "Ohio Election Report," of which he was the lead author. That report read in part:

This [Democratic] voter registration effort was not limited to registration of legal voters but, criminal investigations and news reports suggest, that this voter registration effort also involved the registration of thousands of fictional voters such as the now infamous Jive F. Turkey, Sr., Dick Tracy and Mary Poppins. Those individuals registering these fictional voters were reportedly paid not just money to do but were, in at least one instance, paid in crack cocaine.

And in testimony on Dec. 7, 2006, the same day the prosecutors were fired, Hearne told the Election Assistance Commission: "Recent press reports suggest that voter registration fraud remains a significant issue in the recent mid-term elections."

The press contact for ACVR is Jim Dyke, who was the communications director of the Republican National Committee during the 2004 election. In the fall of 2005 he was working in the White House trying to get Harriet Miers on the Supreme Court, before moving on to work in Vice President Dick Cheney's office. Brad Friedman of [BradBlog.com](http://BradBlog.com) reported that according to internet records, Dyke registered the ACVR Internet domain name, ac4vr.com, in December 2004. Those records have since disappeared from public view. (The source of ACVR's funding is also mysterious. According to the *Pittsburgh Tribune-Review*, "When asked to name any contributors to his nonprofit, Hearne claimed he did not know but said Lunde did. When Lunde was asked, he claimed he did not know but said Hearne did.")

Dyke is a good friend of his fellow Arkansan Tim Griffin, the new U.S. attorney in Arkansas. In 2004, both worked at the Republican National Committee helping Bush get re-elected. Dyke has been a vocal defender of Griffin's appointment as U.S. Attorney. "He has a real passion for the law," Dyke told the *Arkansas Democrat-Gazette*.

Rounding out the GOP operatives is Pat Rogers, who sits on the board of ACVR. An attorney for the Republican Party in New Mexico, he has been a vocal critic of fired U.S. Attorney Iglesias. According to the *Albuquerque Tribune*, Rogers is on the short list to replace Iglesias.

#### Rove's role

Minnite, who did the study on voter fraud, has read through the reports prepared by ACVR and presented by Hearne at various official hearings. She noticed that the claims follow a predictable script. "It all starts to look the same," she says. "There is a pattern in the way the documents that claim to show voter fraud are put together. It is usually a compilation of news reports on allegations. There is no follow up, no research done, no analysis."

"As I delved into it, I was faced with the question: 'Why do people think there is a lot of fraud when there isn't any real evidence?' I think people are being manipulated by politics, which takes the form of these reports that are dumped on the public. It is as if you get a big enough pile maybe you will convince people that the volume of fraud is quite large and that we have a serious problem."

Wisconsin provides a case in point. At a March 13 press conference, White House Counsel Dan Bartlett identified Wisconsin as one of the states from which the White House had "received complaints about U.S. attorneys."

In 2005, U.S. Attorney Steve Biskup, who was appointed by Bush, investigated these allegations of voter fraud and reported that he found no evidence on which to press charges.

It turns out that early in 2005, Republican officials in Wisconsin prepared a report titled "Fraud in Wisconsin 2004: A Timeline/Summary." The document, which was found in White House and Justice Department records released by the House Judiciary Committee, was written by Chris Lato, the former

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communications director for the state Republican Party, on orders from Rick Wiley, the party's executive director. The 30-page report, which covers Aug. 31, 2004 to April 1, 2005, contains 65 entries detailing voter fraud. The final example is titled: "RPW [Republican Party of Wisconsin] News Release: Evidence of Election Fraud Piles Up."

The information contained in this Wisconsin compilation, made its way into a 78-page report released on July 21, 2005, by ACVR: "Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election." In the introduction, the ACVR's Hearne and Lunde wrote that the report "documents hundreds of incidents and allegations from around the country. ... [T]housands of Americans were disenfranchised by illegal votes cast on Election Day 2004 ... [P]aid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts. ... [R]equiring government-issued photo ID at the polls ... will help assure ... that no American is disenfranchised by illegal votes."

And who was behind this trail of misinformation? On April 7, Daniel Bice, a columnist for the *Milwaukee Journal Sentinel*, reported that a source familiar with the document told him, "The report was prepared for Karl Rove. Rick [Wiley] wanted it so he could give it to Karl Rove."

On April 6, 2006, in Washington, at the aforementioned speech to Republican Party attorneys, Rove began with a joke: "I ran into [ACVR's] Thor Hearne as I was coming in. He was leaving; he was smart, and he was leaving to go out and enjoy the day." Rove then told the assembled party lawyers, "We have, as you know, an enormous and growing problem with elections in certain parts of America today."

Rove should know. He helped grow the problem.

#### **A Selective View of Fraud**

**By: Joe Conason  
New York Observer**

Even as Alberto Gonzales rehearses his excuses for the strange dismissal of eight United States Attorneys, which he will perform in public at a Senate hearing this week, he is looking like a marginal player in this scandal. The Attorney General fumbled his role, but in keeping with his Presidential nickname (Fredo), he probably never understood the broader scheme originating in the Bush White House.

Developed by deputy chief of staff Karl Rove, the President's top political aide, that scheme was evidently designed to advance his objective of discouraging minority voters and others with the bad habit of supporting Democratic candidates. In Republican parlance, such attempts to hamper registration, intimidate citizens and reduce turnout in targeted communities are lauded as "combating voter fraud." Several of the fired U.S. Attorneys had angered party operatives, including Mr. Rove, because they had shown so little enthusiasm for trumping up fraud cases against Democrats.

Following the 2004 election, David Iglesias, then serving as the U.S. Attorney in New Mexico, set up a task force to investigate Republican allegations of fraud. Those accusations boiled down to a single case where a woman had created a handful of phony registrations. (She did so for financial reasons, rather than out of any desire to manipulate the election.) When Mr. Iglesias declined prosecution for lack of airtight evidence, local Republicans began to demand his replacement with a more pliable and less professional prosecutor—a demand eventually fulfilled by Mr. Rove and President Bush.

In Wisconsin, by contrast, U.S. Attorney Steven Biskupic prosecuted voter-fraud allegations regardless of merit, winning big headlines when he indicted 14 black Milwaukee residents for casting ballots illegally. Nine of those cases were either tossed out or lost in court—an awful result compared with the normal conviction rate of over 90 percent. But at least the mediocre Mr. Biskupic—whose conviction of a Democratic state official was just overturned on appeal—managed to remain in the good graces of the White House and keep his job.

The Republican cry of "voter fraud" is a specious complaint, amplified by right-wing hacks to conceal the

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fact that in recent years, the most sustained efforts to interfere with orderly elections and voting rights can be traced to the Republican National Committee.

Harassing minority voters with bogus claims of fraud is a venerable tradition in the G.O.P., as anyone familiar with the career of the late Supreme Court Chief Justice William Rehnquist would know. Back in the early 60's, when Rehnquist was just another ambitious young lawyer in Arizona, he ran a partisan campaign to confront black and Hispanic voters over their "qualifications." Along with many of today's generation of Republican leaders, he was a stalwart of the Goldwater campaign in 1964, which garnered its handful of electoral votes in the South by opposing the Voting Rights Act.

Then came Richard Nixon's Southern strategy of nurturing racist grievances to build Republican majorities—around the time that a young operative named Karl Rove was rising in the party. Under his leadership, the G.O.P. has repeatedly been disgraced by conspiracies to diminish voter participation.

In 2002, Republican operatives used a telemarketing firm to illegally jam Democratic phone banks in New Hampshire to win the U.S. Senate seat now held by John Sununu. In 2004, Florida state officials sent armed officers into certain Orlando neighborhoods to scare elderly black registrants, while Republicans sought to challenge minority voters en masse in communities in Kentucky, Nevada, South Carolina, Pennsylvania and Ohio, and paid for the destruction of Democratic voter registrations in Nevada and Oregon.

Actual voter fraud of the kind decried in Republican propaganda is rare, according to nonpartisan experts. Although the White House recently rewrote a careful federal study by the Election Assistance Commission to hide that basic fact, it remains true that very few individuals intentionally seek to fabricate a registration or cast an illegal ballot. There are exceptions, of course—most notably illustrated by Republican celebrity Ann Coulter.

When the far-right columnist and television personality registered to vote in Palm Beach, Fla., in 2005, she wrote down the address of her realtor's office rather than her own home address. She then signed the form, despite its plain warning that falsifying any information on it would make her liable to felony prosecution—and which she, as a lawyer, surely understood. According to Palm Beach County election officials, she also voted in the wrong precinct the following year, disregarding a poll worker who explained her error. (Coulter fans can view her dubious voter-registration form online at [www.bradblog.com](http://www.bradblog.com).)

If proved, those acts would be crimes punishable by prison terms of up to five years, but Ms. Coulter has stonewalled the ongoing investigation. (She says the Palm Beach officials are syphilitic and mentally defective.) No charges have been filed so far, perhaps because her lawyer is a prominent Republican who worked on *Bush v. Gore* in 2000—and whom the President then appointed as U.S. Attorney for the Southern District of Florida. He must know a lot about voter fraud.

#### **Voter ID laws need measured implementation**

Timothy J. Ryan, AEI-Brookings, 4/17/2007

The controversy over laws that require citizens to present identification in order to vote returned to national attention last week with a prominent report cataloging steps that the Election Assistance Commission took to lessen the splash of a study examining voter fraud in the United States. Where the original study concluded that there is "widespread but not unanimous agreement that there is little polling place fraud," the version revised by the EAC finds that "there is a great deal of debate" about the prevalence of voter fraud and made other adjustments to temper the findings.

Voter ID laws tend to invite rancor because partisans on both sides of the aisle believe any changes could affect the outcome of various elections. Republicans generally express concern that lax requirements open the door for elections to be stolen by duplicate voters and the like, while Democrats point to a lack of evidence about the extent of fraud and fear that identification requirements dissuade a large number of poor and minority voters—traditionally Democratic constituencies—from voting. Many people in these demographics, the argument goes, do not have drivers' licenses or comparable

identification and can experience difficulty in acquiring them. Further, even the identifications that some states provide for free require documentation—birth certificates or the like—that themselves can require high fees. In this way, ID requirements are compared to modern poll taxes.

A balanced take on the situation is made more difficult by a terrible paucity of convincing evidence regarding both the extent of fraud and the degree to which ID requirements depress turnout. Timothy Vercellotti and David Anderson have released one study suggesting a small negative influence on turnout, but they will be the first to admit that good evidence is hard to come by and that their conclusions are hardly definitive. Similarly, Tova Wang, Spencer Overton, and others point to the fact that relatively few examples of voter fraud have been reported, but skeptics can always respond with the valid concern that fraud, being a criminal activity, is undetectable whenever it is successful. We only know about fraud when it is caught; who knows how much fraud escapes our attention? And even if fraud is uncommon today, could it not become a problem tomorrow?

Aside from the difficulty of balancing integrity and accessibility, proponents of voter ID laws argue that identification requirements will help to restore the flagging confidence in election administration (see Indiana Secretary of State Todd Rokita's Q&A here) and that the standards are needed to bring U.S. practices on par with the rest of the world; most advanced democracies require identification of some kind (though the onus of providing the ID oftentimes lies on the government).

Perhaps there are a few items within the debate upon which both sides of the aisle can agree. First, voter ID laws would not prevent all kinds of fraud or even the most consequential. Requiring an ID might prevent impersonation of other individuals at the polling places, but it would not, for example, prevent the stuffing of ballot boxes, either in the old, literal sense or the modern electronic equivalent: the subversion of machine software through hacking.

Second, it is difficult to perpetrate fraud—at least the kind of fraud that IDs are designed to prevent—in the volume that would be necessary to swing an election. Impersonating a voter would require either falsifying registration forms to place fictional voters on the rolls or stealing the persona of someone who had already registered. In the first case, an election thief would typically have to contrive fake addresses, a kind of fraud that could well be discovered if perpetrated on a large scale. Similarly, stealing the identity of a real person would require an assurance that the victim had not already voted. Otherwise, a fraudulent voter could be caught red-handed.

Furthermore, in-person fraud would require the perpetrators to travel to enough polling stations on Election Day so as to cast a significant number of fraudulent votes. How many polling places could a single person visit in one day? Fifteen? Perhaps twenty? Such a small number of fraudulent votes is unlikely to change the outcome of an election, and so it seems that any successful scheme would have to employ a group of individuals. Of course, as the number of perpetrators increases, so does the probability of being caught. How many of even the most avid partisans would undertake the formidable risk of jail time in order to marginally increase the likelihood of their favored candidate winning? In many ways, the kind of fraud that an ID requirement would prevent is akin to the counterfeiting of nickels and dimes: high risk for low reward.

Finally, any effort to neutralize voter fraud without a sober consideration of absentee voting would be sorely incomplete. Absentee voting, which routinely constitutes 30 percent or more of the votes cast in some states (such as California), requires no proof of ID and is very much the Achilles heel of election security. Because a single individual could theoretically acquire hundreds of absentee ballots and complete them in private, it is the method most likely to facilitate wholesale voter fraud. If fraud through impersonation is analogous to counterfeiting nickels and dimes, absentee voting could be the equivalent of counterfeiting \$100 bills. It is for this reason that efforts to encourage absentee voting, such as allowing absentee voting without an excuse, should be considered with great caution.

Nevertheless, if the states do want to employ some kind of ID requirement, they should take steps to minimize the possibility that ID laws will prevent legitimate votes from being cast. For instance, Virginia allows ID-less voters to cast a ballot as long as they are registered and sign an affidavit affirming their

identity. It is a practice not altogether satisfactory to hard-liners on either side, but a reasonable middle ground between security and accessibility. Administrators might even consider strengthening this practice by allowing ID-less voters to check a box indicating that they do not own an acceptable identification. If checked, that individual would receive an ID application in the mail. He or she could then submit the application along with a utility bill or other proof of identity in order to receive a free voter identification card. To reinforce the affidavit's status as a short-term fix, voters who habitually show up to Election Day without an ID might eventually lose the privilege of identifying by affidavit.

There remains room for spirited debate about the merits of voter ID laws. One could plausibly favor them for reasons of confidence and facility of recordkeeping while still denying that large-scale fraud exists at all. Still, hastily implemented ID laws could disenfranchise legitimate voters to a far greater degree than they would prevent illegitimate voting. For this reason, lawmakers who genuinely seek to administer elections with an eye towards inclusiveness as well as integrity should consider the imposition of greater requirements with the utmost care.

*Timothy J. Ryan can be reached at [tryan@aei.org](mailto:tryan@aei.org). This piece originally appeared in the AEI-Brookings Election Reform Project Newsletter.*

### What the Senators Should Ask Gonzalas

By Mark A.R. Kleiman

There are really only two questions the Senate Judiciary Committee needs to ask Alberto Gonzales today:

1. Why are you such a lying turkey?
2. When are you going to resign?

But that would make for an unduly short hearing, so here are a few more questions, just to fill in the time:

1. In your prepared testimony released over the weekend, you assert that you had no advance role in planning for the Pearl Harbor Day massacre. An email sent last year by your assistant, Kyle Sampson, says otherwise. Can you explain the discrepancy?
2. If you were concerned about the performance of the U.S. Attorneys who were fired, why didn't you or anyone from DoJ HQ write them to document those concerns and ask for plans of improvement? Isn't that normal management practice?
3. If you were concerned about the performance of the U.S. Attorneys who were fired, why did the Director of the Executive Office of U.S. Attorneys not know anything about those concerns until the firings happened?
4. Did anyone in the White House, directly or indirectly, ever express concern about Carol Lam's corruption investigations? Who? When? What was said?
5. Do you agree with the theory offered by U.S. Attorney Biskupic than anytime political considerations

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enter into the award of a public contract, that constitutes misappropriation of funds? Has the Public Integrity Section considered or brought such cases against any Bush Administration officials? Why not? And if you don't think that theory is legally sound, why does Mr. Biscupic still have a job?

6. Is it true that Karl Rove and/or Pete Domenici asked you to fire David Iglesias? If so, what were their stated reasons? Is it true that you refused to fire him without a direct order from the president? Did you ever discuss Mr. Iglesias's tenure with the president? Did he instruct you to fire Mr. Iglesias?

7. No doubt you've seen the letter sent by an anonymous group of DoJ career staff, charging that the Honors Program hiring process has been politicized, and that summa cum laude graduates of Harvard and Yale Law Schools chosen by the operating divisions as potential new hires were denied interviews on the orders of the Deputy Attorney General's office because their resumes indicated liberal political leanings or experience working for Democratic legislators. What inquiries have you made into the truth of those allegations? When can you have us a full report, with the names of the candidates redacted?

8. When was it decided that the Civil Rights Division would give preference in hiring to attorneys with no experience in civil rights law? Why? Is it helpful for fewer than half of the new hires to have relevant experience, compared to the historical average of more than three-quarters?

Or is it simply that less experienced attorneys generally aren't as likely as career professionals to resist political interference?

9. During your tenure, the Department has moved away from prosecuting cases of voter intimidation and suppression and toward prosecuting cases of "voter fraud." But you have yet to develop a case where there was any concerted effort to steal a federal election by having ineligible people vote, and in fact a high proportion of the "vote fraud" indictments brought have ended in acquittals. A consultant's report to the Election Assistance Commission found no evidence of any widespread vote fraud, but did find systematic voter suppression and intimidation. Why, in the face of this evidence, do the Department and the White House and the RNC continue to insist that "voter fraud" is a serious problem. If it is, why can't you seem to find any?

10. In your view, does the theory of the unitary executive bar the Justice Department from prosecuting White House officials for contempt of Congress if they refuse to comply with Congressional subpoenas?

11. After Deputy Attorney General Paul McNulty testified before this committee that the U.S. Attorney for Arkansas, Bud Cummins, had been let go for purely political reasons, Brian Roehrkas of your public affairs staff, who was traveling with you in Argentina, sent an email to your chief of staff, Kyle Sampson, saying that you were unhappy with that testimony. Were you unhappy about it because it was false, or

because it was true? If you thought it was false -- if you thought, that is, that the Deputy Attorney General of the United States had testified falsely before this committee -- why did you not notify the committee, or insist that Mr. McNulty notify the committee, about the error? If you didn't think it was false, what was the basis of your concern? Did you think it inappropriate for the Deputy Attorney General to tell the truth under oath?

12. There are conflicting stories about the role of the junior senator from Minnesota, Mr. Coleman, in the appointment of Rachel Paulose as U.S. Attorney. It would have been normal for the only senator of the President's party from the affected state to be consulted. Did you, or to your knowledge anyone in DoJ or the White House, ever discuss Ms. Paulose's appointment with Senator Coleman? If so, what was his advice?

13. What was your role in inserting the provision allowing the president to appoint replacement U.S. Attorneys without Senate confirmation into the USA PATRIOT Act reauthorization? To your knowledge, who first came up with that proposal? At what point did you first consider using that provision in connection with the Pearl Harbor Day massacre? How did it happen that Mr. Tolman, formerly the Chief Counsel to this committee who (according to the senator from Pennsylvania, Mr. Specter, then the Chairman) oversaw the somewhat surreptitious insertion of that provision into the law, then became United States Attorney for Utah? Why did the Department oppose the repeal of that provision after the Pearl Harbor Day massacre? What communications have you had with the senator from Arizona, Mr. Kyl, about his placing of a hold on that repeal proposal even after DoJ reversed its stated position?

14. Why wasn't Monica Goodling dismissed immediately after she asserted her right against self-incrimination in connection with the Pearl Harbor Day massacre? Would that not be consistent with the Department's pressure on corporations to fire employees who refuse to cooperate in investigations?

*Mark Kleiman is Professor of Public Policy and Director of the Drug Policy Analysis Program at UCLA. He blogs for The Reality-Based Community.*

#### **A really important homework assignment**

*By Joan Brunwasser  
Op-Ed News*

**A Really Important Homework Assignment**  
By Joan Brunwasser, Voting Integrity Editor, OpEdNews April 18, 2007

I am better at writing than doing, talking than doing, virtually anything than actually doing. I'm probably not the only one, but it sometimes makes a mockery of my so-called activism.

My heart is in the right place, but I was born in the wrong generation. High-tech is just not me. If I had been around in the early twentieth century, I would have been a hold-out for the horse and buggy, flustered by those whippersnappers flashing by in their horseless wonders. Paper and pencil are my



preferred means of communication, which is why you'll never catch me with a PDA. My sore rear end is a result of my work at OpEdNews, not from surfing the web.

One of the perks of my role as voting integrity editor is that I've been able to connect and establish a rapport with many of the people who have been driving the election integrity movement over the last few years. I do my best to be fair, and I have no particular axe to grind, so people are pretty patient about my technological shortcomings. OpEdNews does its best to include as many of the activists and their work as possible, and we've done a pretty good job at it.

Brad Friedman is one of my cyber-buddies. I have gotten a great education on election integrity from BradBlog.com. His daily exposés are, for me, what I imagine a cup of coffee is for caffeine addicts. I need my fix to feel like I'm on top of things. We have corresponded for quite a while, and even once had a freewheeling phone conversation with the potential of turning into an interview (except for the fact that I don't know how to do interviews and my computer ate the file of the transcript that he sent me). I am grateful to him for teaching me how to insert links so that my articles would look more professional, even though I wasn't a particularly quick study.

I often feel like a cheerleader (finally, sort of fulfilling my aspirations as a junior high schooler). People do great work, and I commend them for it by posting their articles at OpEdNews to give them more exposure. But, in terms of being able to follow exactly what they're saying or actually follow through on their calls to action, there's the rub. And I don't think I'm the only one, either.

I've had an idea for a while about developing a prototype so that people could print it up and have it in front of them when they made calls to their secretaries of state to enlist their support for election reform. It's a project that is on my friend Nancy (of the Election Defense Alliance) Tobi's list, but the truth is that she is so busy with everything else she's doing, she hasn't been able to get to it yet. Nancy believes that our congressional representatives need to hear from their constituents, and that we all need to begin identifying which ones are on our side and which are not. We need to be strategic in order to win. (Stay tuned for your next assignment. Our template for contacting your congressional reps is in the works.)

In the meantime, there I am, full of good intentions. But, have I picked up the phone and called my own Secretary of State, Jesse White? No, I shamefacedly admit, I have not. And if I haven't, I venture to guess that most people haven't either.

Why haven't I? I'm uncomfortable doing it because I don't feel that I really get all the issues yet, which makes me tentative. That's why I thought of this how-to template that would lay out the issues in a very straightforward, easy-to-follow format. That way, I could just clutch it in front of me when I made my phone call.

I wrote Brad about his article on the latest electronic voting machine/EAC scandal - [click here](#) "Exclusive: ES&S Touch-Screen Voting Systems Found Vulnerable to 'Serious' Viral Vote-Flipping Attack; US Election Assistance Commission Refuses to Issue Warning" - which reads in part,

The vulnerability is said to allow for a single malicious user to introduce a virus into the system which "could potentially steal all the votes in that county, without being detected," according to a noted computer scientist and voting system expert who has reviewed the findings.

I commended Brad (and co-author Michael Richardson) on the post. This is what he wrote me when I asked what we can be doing.

[Make] noise, noise, noise. Any way possible. You're media! Call the EAC [Election Assistance Commission] and see if they have any explanation for that article!

When they give you the same old song and dance, report it again! Call a couple of the SoS offices at the affected states and ask them if they know their systems were found to have been vulnerable to viruses from a single person that could flip an entire county's election undetectedly, and ask them why they didn't

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know about it, since the EAC did, and if they think the EAC should have let them know. Etc.

Advance the story, report it. We could use ya, teammate!

So, here's what I did. I went online and got the telephone number of the EAC, (toll-free 866-747-1471) and the name of the director (Jeannie Layson).

Then, I went online again and got the link for the complete roster of all 50 states (<http://www.nass.org/sos/soscontact.html>) with the Secretaries of States and their phone and fax numbers, snail mail and e-mail addresses. In short, more information than you or I will ever need.

Then, I printed up a copy of the original article from April 16th by Michael Richardson and Brad Friedman (<http://www.bradblog.com/?p=4396#more-4396>) as well as an update that lists the 16 states affected by this newly discovered "virus vulnerability" (<http://www.bradblog.com/?p=4416>). So now I'm all set with everything I need.

Unfortunately, it's too late today to call. But, tomorrow, I will take all of my pieces and:

1. Call the EAC and ask them about the article and why they take no responsibility for contacting and warning the states affected by this serious breach. (Keep in mind that this incompetent group is about to be made a permanent fixture on the political landscape if HR 811 is passed.) I will note any comment, or refusal to comment.
2. Then, I will call as many of the 16 secretaries of state as I can to ask what they think about this article, which I will offer to fax or email to them. (I'm assuming that after one or two calls, it will be pretty easy and the words will just roll off my tongue.)
3. Then, I will contact my own secretary of state (thankfully, Illinois is not on this list, but we have plenty of our own problems) and discuss how we can work together on spreading the word about the problems with the EAC, electronic voting and HR 811.
4. Then, I will write another OpEdNews piece and tell you how it went!

Hopefully, you will all take heart from this boiled-down, step-by-step template and be empowered to follow the steps yourselves. Let me know where you got to and what they said. Trust me when I say that this kind of approach can make a difference. In the meantime, we will be creating dozens - hopefully even hundreds or thousands - of citizen journalists who are stepping forward to do the job so disastrously abandoned by the mainstream corporate press.

I almost forgot the last step:

5. I will take my shoes off, put my feet up, and heave a big sigh of relief. Thanks, Brad, for making me do this. I feel a lot better now. And it wasn't even as hard as I thought it would be.

Authors Bio:

Joan Brunwasser of Citizens for Election Reform is a citizen activist working hard to restore and preserve free and fair elections. She started a lending library project to distribute the "Invisible Ballots" DVD in mid September 2005. In the following eighteen months, she loaned the DVD to almost 3,200 'borrowers' in 37 states, DC, Puerto Rico, Canada, Holland, England, Ireland and Japan. Since the DVD's release in spring 2004, there have been numerous studies and hacks, all of them critical of electronic voting. Her new focus is on raising public awareness about what's wrong with our elections and how to achieve a fair, secure and transparent election system. She welcomes your help in spreading the word. She has been the Voting Integrity Editor for Op Ed News since December 2005.

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## **Millender-McDonald reveals few details**

After feeling ill earlier this month, House Administration Chairwoman Juanita Millender-McDonald (D) visited at least one doctor in Washington, D.C., and returned home to California prior to the April recess for several more sessions with physicians before informing House Democratic leaders Friday that she is suffering from cancer.

According to Millender-McDonald's chief of staff, Bandele McQueen, the Congresswoman, who has closely guarded information regarding her health over the years, has not even told her Capitol Hill staff what type of cancer she is suffering from or how aggressive it might be.

"We appreciate the concerns folks have for the Congresswoman, but at this point we don't have any more information on the type of cancer or the type of treatment," McQueen said.

Millender-McDonald's official leave of absence, granted by Majority Leader Steny Hoyer (D-Md.), extends through May 25.

"She's not going into the office this week or anything, but by being in the district she will have the ability, whether it's working from home or going into the office, to continue to conduct the business of the 37th," said McQueen. "But right now the main focus is making sure that she's well. Hence she's asked for this leave of absence. ... She is hoping to return as soon as possible."

However, McQueen added, "I would be lying to you if my concern is her return to Congress. My concern is her return to good health."

He added that Millender-McDonald has medical staff attending to her at home on an hourly basis, but he dismissed rumors that it was any kind of hospice situation.

On Wednesday, Millender-McDonald was elected, in absentia, to serve as vice chairwoman of the Joint Committee on the Library at the panel's organizational hearing.

During that session, several Members on both sides of the aisle expressed their sympathy and wishes for a speedy recovery, including Sen. Dianne Feinstein (D-Calif.), the newly elected chairwoman of the Library of Congress panel.

Immediately afterward, the Joint Committee on Printing held its organizational hearing, in which House Administration Vice Chairman Robert Brady (D-Calif.) was elected chairman of the joint panel (Feinstein will serve as his vice chairwoman). While the Printing gavel has in the past fallen to the chairman of the House Administration Committee, the decision that Brady would run the committee in the 110th Congress was made with input from the Democratic leadership well before Millender-McDonald announced her illness, according to Brady's chief of staff.

Meanwhile Brady will be leading the House Administration Committee during Millender-McDonald's absence, although he stressed on Wednesday that "I'm just keeping things warm until the lady comes back."

But while giving his remarks at the joint committee's meeting, House Administration ranking member Vernon Ehlers (R-Mich.) – who also is serving on both joint panels and led the Library committee in the 109th Congress – jokingly referred to Brady as "Mr. Mayor" in reference to his ongoing campaign for mayor of Philadelphia.

The primary for that election will be held more than a week before Millender-McDonald is due to return from her leave of absence.

When asked about the joke after the hearing, Ehlers simply noted that Brady will have "a very busy life" chairing the committee while seeking another office.

"But," he added, "it's Speaker [Nancy] Pelosi's (D-Calif.) appointment and he's going to have to decide if

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he wants to do it" while he's actively campaigning.


But even prior to this week's news about Millender-McDonald's illness, Republican committee staff have raised concerns about the panel's inaction in certain areas of jurisdiction including the Capitol Visitor Center project and Smithsonian Institution. Meanwhile, other House and Senate committees have been holding hearings on those subjects.

Earlier this month, Ehlers wrote a letter to Millender-McDonald criticizing Democratic leaders for not yet appointing Members to serve on the Franking Commission, which oversees House lawmakers' official mail. Ehlers pointed to a rise in unsolicited e-mail as "evidence of the toll that a lack of oversight has taken."

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029931

Margaret Sims /EAC/GOV  
04/18/2007 05:40 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Need your help ASAP 

Jeannie:

I did not receive your request in time to type responses on my blackberry by 2 PM, given the information needed. Here are the answers to your questions:

*1. Why did we only contact DOJ officials regarding the accuracy of their interviews?*

As far as I know, we didn't. contact DOJ officials about this except in response to concerns they had previously expressed to us. Also, I don't believe we ever allowed DOJ to edit the summaries. (I certainly didn't.) I believe the consultants and I discussed the idea of having all the interviewees review their respective interview summaries, but the consultants objected to the idea and there were concerns that the all of the money remaining available was needed to complete the final report.

Craig Donsanto, Election Crimes Branch, saw the summary of his interview among the documents provided to the Working Group (prior to the meeting of that group), and pointed out an important factual error. The summary, as originally written, portrayed DOJ as switching from the prosecution of conspiracies to the prosecution of individuals. I was present at this interview and this was not what Craig had said, nor is it supported by the information available on the election crimes pursued by that branch. DOJ continues to pursue conspiracies and, in addition, has begun to pursue individuals (specifically, double voting, felon voting and alien voting) in an effort to deter others from election crime.

To my knowledge, John Tanner, Voting Section, Civil Rights Division, had not seen the consultants' full summary of his interview; but he expressed concern to Tova Wang and EAC about the consultants' characterization of the interviews with Donsanto and him that had been included in the May 2006 status report. This report was provided to the members of the EAC Standards and Advisory Boards. Per HAVA requirements, the Voting Section is represented on the Advisory Board. Tanner pointed to the following errors:

- First, the consultants stated that DOJ was not pursuing voter suppression cases. Tanner responded that "[t]he Department has brought two 11(b) cases, one of the two in this Administration. The focus of DOJ activity has shifted, in fact, to voter suppression as there are fewer cases over voter dilution (challenges to at-large election systems, etc.) being brought by anyone as the number of jurisdictions with at-large election systems has shrunk dramatically. This Administration has, in fact, brought far more voter-suppression cases ... than ever in the past, including a majority of all cases under Sections 203 and 208 of the Act, and such key recent Section 2 cases as US v. City of Boston and US v. Long County, Georgia."
- Second, the consultants implied that DOJ is not pursuing instances of unequal implementation of ID rules. Tanner's response was that "[c]hallenges based on race and unequal implementation of ID rules are indeed actionable and we have brought lawsuits, such as in Boston and Long County; we have not identified instances of such discrimination in which we have not taken action."

Tanner also pointed to the consultants' refusal during the interview to define what they meant by "voter intimidation", which Tanner suspected did not jibe with the meaning of the term in federal prosecutions and probably contributed to misunderstandings. (Federal voter intimidation prosecutions require the threat of economic or physical harm.)

By the way, both of these officials are career attorneys, not political appointees. They have years of service at DOJ, working under a number of different administrations.

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*2. Exactly what did we change and why?*

In the case of the Donsanto interview summary, I spoke with our consultants and asked them to make the correction. At first, they both refused. Later, they revised the summary to be a little less blatant, but the implication that there had been a complete change in approach remained. We revised the summary to clearly indicate that prosecution of conspiracies continues. The revised paragraph is on page 4 of the published summary. We also added an intro paragraph similar to other interview summaries submitted by the consultants to summarize the enforcement authority of the Election Crimes Branch and to distinguish it from the Voting Section, Civil Rights Division.

In the case of the actual John Tanner interview summary, we added an intro paragraph similar to other interview summaries submitted by the consultants to summarize the enforcement authority of the Voting Section and to distinguish it from the Election Crimes Branch. We also moved the consultants' note about the refusal to share certain internal working papers to the end of the summary because it seemed to distract from the main interview points if left as an introduction.

Making the distinction between the Election Crimes Branch and the Voting Section is important. The Voting Section brings cases involving "systemic" discrimination because federal voting statutes focus on discriminatory action by local governments. It is criminal statutes that involve malfeasance by individuals and that are enforced by the Election Crimes Branch through Us Attorneys' offices. The difference is key to understanding federal election law enforcement.

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/18/2007 12:17 PM

To psims@eac.gov

cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

Subject Need your help ASAP

Peg,

If possible, I need answers for these questions in reference to the vote fraud/voter intimidation project by 2 p.m. today for an inquiry for Congressional Quarterly:

1. Why did we only contact DOJ officials regarding the accuracy of their interviews?
2. Exactly what did we change and why?


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029933

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029934

Juliet E. Hodgkins/EAC/GOV  
04/18/2007 12:19 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Need your help ASAP 

History:  This message has been replied to.

I sent this comparison to the committee. It shows in track changes the changes that were made to the interview summaries ( I assume that is what you are looking for).



Summaries of Interviews with Donsanto-Tanner revised.pdf

Juliet T. Hodgkins  
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(202) 566-3100  
Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/18/2007 12:17 PM

To psims@eac.gov  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
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029935



## Deliberative Process Privilege

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity  
Section, U.S. Department of Justice  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising  
federal criminal investigations and prosecutions of election crimes.

### Questions

#### *How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

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No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources -- local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ~~(Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).~~

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

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Donsanto provided us with three case lists: ~~Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.~~

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, (Charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes, he Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.

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2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

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3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

Interview with John Tanner, ~~Director~~ Chief, Voting Section, Civil Rights Division,  
U.S. Department of Justice

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake phone logs; data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses looks only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, ~~have made it so now~~ the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do

with the complaint, the section errs on the side of referring it criminally to avoid having any because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

#### Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the dDepartment was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the ~~voting~~ Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never

formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint in-take phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing

elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

029942

Jeannie Layson /EAC/GOV  
04/17/2007 02:14 PM

To cbertelson@post-dispatch.com,  
khorrigan@post-dispatch.com  
cc  
bcc

Subject EAC and the Vote Fraud and Voter Intimidation Project

Ms. Bertelson and Mr. Horrigan,  
Thank you so much for speaking with me. Here's information about the vote fraud/voter intimidation project:

The vote fraud and voter intimidation project began in Sept. 2004. As I said, the statement that this project had been five years in the making is incorrect -- that predates the creation of the EAC. Commissioners were appointed in Dec. 2003, and the agency's first year of operations was 2004 with a \$1.2 million operating budget.

Also, any assertion that the administration edited the final report, Election Crimes: An Initial Review and Recommendations for Further Study, is absolutely false. And just to be clear, at no point in this process did the administration play any role at any time during the life of this project. As we discussed, EAC contracted with two consultants to do two things: define "vote fraud" and "voter intimidation" and provide recommendations for future study based on their review of court cases, literature and interviews with 24 people who have experience in these areas. On page 24 of the final report, there are links to appendices which contain the consultants' bios, as well as interview summaries, and all of the court cases and literature they reviewed. EAC advisory boards were briefed on this project at a public meeting in May 2006.

EAC staff reviewed every article, every court case and every interview for accuracy, as we have a responsibility to do. This review process was conducted within the agency by EAC staff. After the staff reviewed the document and edited it for accuracy, added information reflecting which recommendations the commission should adopt, it presented its recommended report to the commission. The commission adopted the final report at a public meeting in December 2006. This meeting was also webcast.

Since the adoption of the final report, the Commission's actions have been questioned by Members of Congress, the media and others. Yesterday, EAC Chair Donetta Davidson requested that the inspector general conduct a review surrounding the circumstances of this project and the voter ID research project. Go here to read the Commission's statement, the memo to the IG and the letters we've received from Congress.

Criticism is fair and healthy. However, I request that criticism be based on facts. It is not factual to state that it took five years to complete this project. And it is not factual to state that the administration played any role -- editing or otherwise -- in this project.

I request a correction that clarifies both of the above points. Also, I think it would be fair to point out that the chair has asked the IG to look into the process. You could link to the IG memo and let readers see our point of view, and the point of view of those who are critical of EAC decisions.

I thank both of you for your consideration in this matter. And again, let me reiterate the fair and professional treatment EAC has received from the reporters in the DC bureau. We look forward to answering any questions the editorial board or the news side of your organization has about EAC or its decisions or actions. Please don't hesitate to call me if I can be of assistance in the future.


Jeannie Layson  
U.S. Election Assistance Commission  
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Washington, DC 20005

029943



Phone: 202-566-3100  
www.eac.gov

Margaret Sims /EAC/GOV  
04/17/2007 01:27 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC  
bcc  
Subject Re: Vote fraud report 

As far as I know, you are absolutely correct! Julie did the bulk of the rewrite and used my analyses of the preliminary info submitted by our contractors. I know that I had no contact with the administration regarding this study. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/17/2007 01:16 PM


To psims@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,  
jthompson@eac.gov  
cc  
Subject Vote fraud report

The St. Louis Post Dispatch wrote an editorial that said the administration edited our report. I am almost absolutely sure that is not true, but I wanted to confirm that with you before I request a correction. Thanks.

Jeannie Layson  
U.S. Election Assistance Commission  
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Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029945

Juliet E. Hodgkins/EAC/GOV  
04/17/2007 01:25 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Vote fraud report 

I did not request that the White House or administration review our report, nor did I send it to them.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
04/17/2007 01:16 PM

To psims@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,  
jthompson@eac.gov  
cc  
Subject Vote fraud report

The St. Louis Post Dispatch wrote an editorial that said the administration edited our report. I am almost absolutely sure that is not true, but I wanted to confirm that with you before I request a correction. Thanks.


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029940



Sheila A. Banks/EAC/GOV  
04/17/2007 11:28 AM

To jlayson@eac.gov  
cc  
bcc  
Subject Statement for PDF'ing

History:  This message has been replied to.



Hillman Statement on the release of the voting fraud report 12.01.06 (DRAFT).doc



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**STATEMENT BY ELECTION ASSISTANCE COMMISSIONER GRACIA HILLMAN ON  
“THE EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY”**

**Washington, D.C. – December 7** – Today the Election Assistance Commission (EAC) voted on the findings of the “Voting Fraud and Voter Intimidation Study” and accepted recommendations to conduct a comprehensive study to assess all claims, charges and prosecutions of voting crimes. This report, which was largely based on anecdotal information, was months in development and is the result of two independent researchers’ assessment of what characterizes voting fraud and voter intimidation in the United States.

Today’s vote sets in motion the EAC’s acceptance of the researchers’ and subsequent working group’s core recommendation that the matter of voting fraud and voter intimidation deserves more than just an anecdotal assessment, but rather a “comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes” based on “hard data on complaints, charges and prosecutions”.


While I would have liked this report to have been made to the recent 2006 mid-term elections, I am confident that the EAC is on the right path toward next steps which include:

- 1) A comprehensive survey/study on voting fraud and voter intimidation based on hard data by the end of calendar year 2007, and
- 2) By mid-2008, a set of standards/best practices for state election officials and prosecuting authorities to use in assessing legitimate claims and bringing them to justice.

For the EAC’s full report and news release on the “Voting Fraud and Voter Intimidation Study” please visit [www.eac.gov](http://www.eac.gov).

029948

Jeannie Layson /EAC/GOV  
04/16/2007 05:54 PM

To "Adam Ambrogi" <Adam\_Ambrogi@rules.senate.gov>  
cc  
bcc  
Subject Re: Donetta requests IG review 

I'll check on the status of the response and I'll let them know about the hearing. Thanks again...

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Ambrogi, Adam (Rules)" [Adam\_Ambrogi@rules.senate.gov]  
**Sent:** 04/16/2007 05:54 PM AST  
**To:** Jeannie Layson  
**Subject:** RE: Donetta requests IG review

Thanks, Jeannie— I appreciate the 'head's up.' I had heard that from Bryan's list serve a couple of minutes before your email. I will make sure that Howard has seen the release and memo. I will forward it to Senator Durbin's Appropriations staff as well. When you have an estimated timeline for the Commission's projected response to Sens. Durbin and Feinstein, please let me know.

Also- I've been asked to let you all know that Chairman Feinstein has set a tentative date of June 13<sup>th</sup> for a hearing on the Election Assistance Commission. Beyond the tentative date—there are no other details.

I hope that you're doing ok— drop me a line or call if there's anything else that's new.

Best,  
Adam

-----  
Adam D. Ambrogi  
Counsel  
Senate Committee on Rules and Administration  
Russell Senate Office Building, Room 325B  
Washington, D.C. 20510  
202-224-0279

-----  
**From:** jlayson@eac.gov [mailto:jlayson@eac.gov]  
**Sent:** Monday, April 16, 2007 4:10 PM  
**To:** Ambrogi, Adam (Rules)  
**Subject:** Donetta requests IG review

Just wanted to make sure you knew that Donetta has requested that the IG review the circumstances surrounding the voter ID and the vote fraud and voter intimidation research projects. Info is attached. Let me know if you have questions or need more info... Howard Gantman is on our distribution list, so he should have received this as well.


029949

Hope all is well with you...

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029930

Jeannie Layson /EAC/GOV  
04/16/2007 04:03 PM

To "Hicks, Thomas"  
<Thomas.Hicks@mail.house.gov>@GSAEXTERNAL  
cc  
bcc  
Subject RE: FYI 

I figured...

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
"Hicks, Thomas" <Thomas.Hicks@mail.house.gov>



"Hicks, Thomas"  
<Thomas.Hicks@mail.house.gov>  
04/16/2007 03:59 PM

To jlayson@eac.gov  
cc  
Subject RE: FYI

too late.~)

Thomas Hicks, JD  
Committee on House Administration  
1309 Longworth House Office Building  
Washington, DC 20515-6167  
202-225-2061 (phone)  
202-225-7664 (fax)

---

**From:** jlayson@eac.gov [mailto:jlayson@eac.gov]  
**Sent:** Monday, April 16, 2007 3:57 PM  
**To:** Hicks, Thomas  
**Subject:** FYI

Just wanted to give you a heads up that Donetta requested the IG review circumstances surrounding voter ID and vote fraud & intimidation projects.

Go [here](#) for more info.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW

029951



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"Bryan Whitener"  
<bwhitener@eac.gov>

04/16/2007 03:38 PM

Please respond to  
bwhitener@eac.gov

To jlayson@eac.gov

cc

bcc

Subject EAC Requests Review of Voter ID, Vote Fraud & Voter  
Intimidation Research Projects, 04-16-07



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

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## For Immediate Release

April 16, 2007

Contact:

Jeannie Layson  
Bryan Whitener  
(202) 566-3100

## EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

WASHINGTON - U.S. Election Assistance Commission (EAC) Chair Donetta Davidson today issued a formal request to the commission's inspector general to conduct a review of the commission's contracting procedures, including a review of two recent projects focusing on voter identification and vote fraud and voter intimidation. The chair's memo to the inspector general is attached ( to view the memo and attachments, click [here](#) ).

"The actions taken by the commission regarding these research projects have been challenged, and the commissioners and I agree that it is appropriate and necessary to ask the inspector general to review this matter," said EAC Chair Davidson.

Chair Davidson has requested that the inspector general specifically review the circumstances surrounding the issuance and management of the voter identification research project and the vote fraud and voter intimidation research project.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering


029953

payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary E. Rodriguez, Caroline Hunter and Gracia Hillman.

###

---

Jeannie Layson /EAC/GOV  
04/16/2007 12:25 PM

To Gracia Hillman/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
bcc  
Subject Re: IG Press Release 


The IG's request contains the following information, which is what was in the earlier version of the press release.

This report was the culmination of research conducted by Tova Wang and Job Serebrov, who were tasked with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and working group deliberations. This report should include any recommendations for future EAC research resulting from this effort."

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Phone: 202-566-3100  
www.eac.gov  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
04/16/2007 12:11 PM

To Jeannie Layson/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: IG Press Release 

What language did we use in the request to our IG?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 04/16/2007 12:01 PM EDT  
**To:** Caroline Hunter  
**Cc:** Donetta Davidson; Gracia Hillman; Juliet Hodgkins; Rosemary Rodriguez; Thomas Wilkey  
**Subject:** Re: IG Press Release

029955

Sorry about that... is this sentence acceptable to everyone? It's the last sentence in the fifth paragraph.  
Revised press release is attached.

"EAC staff reviewed the consultants' material, and found inconsistencies in their conclusions and the data they submitted. The material in the final report was motivated by a responsibility, especially as a federal agency, to issue findings only when they are supported by data that can enable EAC to firmly defend its conclusions."

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Caroline C.  
Hunter/EAC/GOV

To Jeannie Layson/EAC/GOV@EAC  
04/16/2007 11:38 AM cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary  
E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subj Re: IG Press Release [Link](#)  
ect

I was referring to the fraud study and why we did not release the contractor's report

Caroline C. Hunter  
Commissioner  
Election Assistance Commission  
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Suite 1100  
Washington, DC 20005  
(202) 566-3107  
chunter@eac.gov  
www.eac.gov

Jeannie  
Layson/EAC/GOV

To Caroline C. Hunter/EAC/GOV@EAC  
04/16/2007 11:33 AM cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary  
E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subj Re: IG Press Release [Link](#)  
ect

029956

It's in there... first sentence in the fourth paragraph: "Last month, the commission voted unanimously to launch a comprehensive study focused on voter identification laws **after concluding that initial research it received in a report was not sufficient to draw any conclusions.**"

Please let me know if that is sufficient.

Jeannie Layson  
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Caroline C.  
Hunter/EAC/GOV

04/16/2007 11:28 AM To Jeannie Layson/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subj Re: IG Press Release [Link](#)  
ect

Could we pls add a sentence about why we did not adopt the fraud report - ie- had conclusions that were not supported by the underlying research.

Caroline C. Hunter  
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Jeannie  
Layson/EAC/GOV

029957

04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC

Subje IG Press Release  
ct

Commissioners,


Per the chair's request, I have drafted the following press release to communicate the commission's decision to ask the IG to review our contract procedures. Please let me know if this is okay with all of you. I would like this to go out ASAP, so if you could get back to me with any comments before noon, I would appreciate it. Sorry for the short turnaround, but I think circumstances demand that this get out immediately. Thank you.

After you give me the okay on the press release, I will send everything to staff before releasing it.

Jeannie Layson  
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029958

Rosemary E.  
Rodriguez/EAC/GOV  
04/16/2007 12:19 PM


To Jeannie Layson/EAC/GOV  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E.  
Hodgkins/EAC/GOV@EAC, Thomas R.  
bcc  
Subject Re: IG Press Release 

Since it's Donetta's statement, I think she should her consent is important. I don't see a need to defend our actions in this release but simply to announce that we have asked the IG to take a look.

Rosemary E. Rodriguez  
Commissioner  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/16/2007 12:01 PM

To Caroline C. Hunter/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject Re: IG Press Release 

Sorry bout that... is this sentence acceptable to everyone? It's the last sentence in the fifth paragraph.  
Revised press release is attached.

"EAC staff reviewed the consultants' material, and found inconsistencies in their conclusions and the data they submitted. The material in the final report was motivated by a responsibility, especially as a federal agency, to issue findings only when they are supported by data that can enable EAC to firmly defend its conclusions."



EAC IGRrequest 04-16-07FINAL.doc Jeannie Layson  
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Caroline C. Hunter/EAC/GOV

029959




Caroline C. Hunter/EAC/GOV

04/16/2007 11:38 AM

To Jeannie Layson/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

Subject Re: IG Press Release 

I was referring to the fraud study and why we did not release the contractor's report

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/16/2007 11:33 AM

To Caroline C. Hunter/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

Subject Re: IG Press Release 

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Please let me know if that is sufficient.

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Phone: 202-566-3100  
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Caroline C. Hunter/EAC/GOV


Caroline C. Hunter/EAC/GOV

04/16/2007 11:28 AM

To Jeannie Layson/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.

029960

Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject Re: IG Press Release 

Could we pls add a sentence about why we did not adopt the fraud report - ie- had conclusions that were not supported by the underlying research.

Caroline C. Hunter  
Commissioner  
Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
(202) 566-3107  
chunter@eac.gov  
www.eac.gov

Jeannie Layson/EAC/GOV

**Jeannie Layson /EAC/GOV**

04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
Subject IG Press Release

Commissioners,

Per the chair's request, I have drafted the following press release to communicate the commission's decision to ask the IG to review our contract procedures. Please let me know if this is okay with all of you. I would like this to go out ASAP, so if you could get back to me with any comments before noon, I would appreciate it. Sorry for the short turnaround, but I think circumstances demand that this get out immediately. Thank you.

After you give me the okay on the press release, I will send everything to staff before releasing it.



EAC IGRequest 04-16-07.doc

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

029961



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

For Immediate Release  
April 16, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

WASHINGTON – U.S. Election Assistance Commission (EAC) Chair Donetta Davidson today issued a formal request to the commission's inspector general to conduct a review of the commission's contracting procedures, including a review of two recent projects focusing on voter identification and vote fraud and voter intimidation. The chair's memo to the inspector general is attached.

"The actions taken by the commission regarding these research projects have been challenged, and the commissioners and I agree that it is appropriate and necessary to ask the inspector general to review this matter," said EAC Chair Davidson.

Chair Davidson has requested that the inspector general specifically review the circumstances surrounding the issuance and management of the voter identification research project and the vote fraud and voter intimidation research project.

Last month, the commission voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research it received in a report was not sufficient to draw any conclusions. The commission declined to adopt the report, but released all of the data to the public. The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, are available at [www.eac.gov](http://www.eac.gov).

At a public meeting in December 2006, the commission adopted *Election Crimes: An Initial Review and Recommendations for Further Study*, available at [www.eac.gov](http://www.eac.gov). This report was the culmination of research conducted by Tova Wang and Job Serebrov, who were tasked with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and working group deliberations. This report should include any recommendations for future EAC research resulting from this effort." EAC staff reviewed the consultants' material, and found inconsistencies in their conclusions and the data they submitted. The material in the final report was motivated by a responsibility, especially as a federal agency, to issue findings only when they are supported by data that can enable EAC to firmly defend its conclusions.

*EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.*

###

**Deliberative Process  
Privilege**

029952

Caroline C. Hunter/EAC/GOV  
04/16/2007 11:38 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
bcc

Subject Re: IG Press Release

History: This message has been replied to.

I was referring to the fraud study and why we did not release the contractor's report

Caroline C. Hunter  
Commissioner  
Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
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(202) 566-3107  
chunter@eac.gov  
www.eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/16/2007 11:33 AM

To Caroline C. Hunter/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject Re: IG Press Release

It's in there... first sentence in the fourth paragraph: "Last month, the commission voted unanimously to launch a comprehensive study focused on voter identification laws **after concluding that initial research it received in a report was not sufficient to draw any conclusions.**"

Please let me know if that is sufficient.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV  
04/16/2007 11:28 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.

029963

Wilkey/EAC/GOV@EAC  
Subject Re: IG Press Release 

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

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cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
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Subject IG Press Release

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EAC IGRequest 04-16-07.doc

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029964



U.S. ELECTION ASSISTANCE COMMISSION  
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Washington, DC 20005

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April 16, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

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###

Jeannie Layson /EAC/GOV  
04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
bcc

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EAC IGRequest 04-16-07.doc

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029966



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects**

For Immediate Release  
April 16, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

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###



Jeannie Layson /EAC/GOV  
04/16/2007 10:18 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
bcc

Subject Chair Requests Internal Review

Commissioners,

The chair has asked me to provide you with the memo she just submitted to Curtis Crider, requesting a review of our contracting procedures surrounding the voter identification and vote fraud and voter intimidation research projects. She has asked me to write a press release about this decision, which I will send to you shortly. She requests that we incorporate the commission's request into the letter to the advisory boards and to Congresswoman Lofgren. She also requests that we respond to Sen. Feinstein's letter, letting her know that we are working to comply with her request, but we wanted to alert her to the action we've taken.

I am going to circulate this to the staff so everyone will be aware of this action. Please let me know if you have any questions, and I will have a press release for your review shortly. Attached to the press release will be this memo, letters from Members of Congress regarding this issue, and the recent statements from Congressmen Hinchey and Serrano.



IG Review Req. 4-16-07.doc

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

029968



**April 16, 2007**

**MEMORANDUM**

**To:** EAC Inspector General Curtis Crider  
**Fr:** EAC Chair Donetta Davidson  
**Cc:** Commissioners Rodriguez, Hillman and Hunter, Tom Wilkey, and Julie Hodgkins  
**RE:** EAC requests review of contracting procedures

On Friday, April 13, each of my three colleagues – Rosemary Rodriguez, Gracia Hillman, and Caroline Hunter -- agreed with my recommendation that we issue the following formal request to the Commission’s Office of Inspector General to review the circumstances surrounding two recent EAC research projects – vote fraud and voter intimidation and voter identification.

**Background**

The U.S. Election Assistance Commission (EAC) is an independent, bipartisan Commission created by the Help America Vote Act (HAVA) of 2002.

EAC develops guidance to meet HAVA requirements, adopts voluntary voting system guidelines, accredits voting system test laboratories, certifies voting systems and audits the use of HAVA funds. HAVA also directs EAC to maintain the national mail voter registration form developed in accordance with the National Voter Registration Act (NVRA) of 1993.

The Commission serves as a national clearinghouse and resource of information regarding election administration. It is under the Commission’s clearinghouse role that research projects are conducted with the goal of providing information that will lead to improvements in election administration, as well as inform the public about how, where and when we vote.

The voter identification research was conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics (“Contractor”). The contract, awarded in May 2005, required the Contractor to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches. Last month, the commission voted

unanimously not to adopt the report, citing concerns with its methodology, but voted to release all of the data provided by the Contractor.

The vote fraud and voter intimidation research was conducted by Tova Wang and Job Serebrov ("Consultants"). The contracts, awarded in September 2005, issued to these Consultants tasked them with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the Consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future EAC research resulting from this effort."

### **Review Request**

The actions taken by the Commission regarding both the voter identification and the vote fraud and voter intimidation research projects have been challenged. Specifically, Members of Congress, the media, and the public have suggested that political motivations may have been part of the Commission's decision making process regarding these two projects. Also, the Commission has been criticized for the amount of taxpayer dollars that were spent on these two projects, as well as how efficiently these projects were managed.

The Commission takes these allegations very seriously, and we request that you fully review the following issues and provide the Commission and the Congress with a report of your findings as soon as possible. The Commission stands ready to assist you in these efforts and will provide whatever information, including memos, emails and other documents you will need. Cooperating with your review will be the staff's top priority.

1. Current Commission policy regarding awarding and managing research contracts.
2. Issuance and management of the vote fraud and voter intimidation contract.
3. Circumstances surrounding the receipt of information from Consultants regarding the vote fraud and voter intimidation project.
4. Circumstances surrounding staff efforts to write a final report for Commission consideration.
5. Identification of staff members who assisted in the editing and collaboration of the final vote fraud and voter intimidation report for Commission consideration.
6. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the vote fraud and voter intimidation project.
7. Circumstances surrounding Commission discussion and deliberation of final adoption of *Election Crimes: An Initial Review and Recommendation for Further Study*.
8. Issuance and management of the voter identification contract.
9. Circumstances surrounding the receipt of information from Contractor regarding the voter identification report.
10. Identification of staff members who assisted in the editing, collaboration, and recommendation to the Commission regarding final adoption of the voter identification report.

11. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the voter identification project.
12. Circumstances surrounding Commission deliberation whether to adopt a final voter identification report.

For your information, I have attached statements and related correspondence from Members of Congress, and a statement issued by the Commission regarding the criticism.

It is our hope that your findings will instruct us how to move forward in a more efficient, effective and transparent manner. The Commission takes its mandates under HAVA very seriously, and this small Commission has an enormous amount of work to conduct, including testing and certifying voting equipment, providing guidance and assistance to election officials, and auditing the proper use of the \$3.1 billion that was distributed under HAVA.

We look forward to your findings so that we may take the actions necessary to improve the way we conceive research projects, manage research contracts, and make decisions regarding the final release of data provided to the Commission from a third party.

Rosemary E.  
Rodriguez/EAC/GOV  
04/12/2007 12:25 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, bwhitener@eac.gov,  
Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Elieen L.  
bcc  
Subject Re: FOIA Request

I do not have anything. Thanks.

Rosemary E. Rodriguez  
Commissioner  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, jthompson@eac.gov,  
klynndyson@eac.gov, psims@eac.gov, sbanks@eac.gov,  
Elieen L. Kuala/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV,  
bwhitener@eac.gov, stephanie.wolson@gmail.com  
cc  
Subject FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100

029972

Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029973



Sheila A. Banks/EAC/GOV  
04/12/2007 11:14 AM

To jlayson@eac.gov  
cc  
bcc  
Subject Research Document



Voter\_Intimidation Synopsis.doc

Statement	Respondents	Source of Data
<p>There is little polling place fraud or at least much less than is claimed, including voter impersonation, "dead" voters, non-citizen voting and felon voters.</p>	<p>Harry Van Sickle &amp; Larry Boyle</p> <p>Sharon Priest</p> <p>Douglas Webber</p> <p>John Ravitz</p> <p>Kevin Kennedy</p> <p>Lori Minnite</p> <p>Wendy Weiser</p> <p>Neil Bradley</p>	<p>No data support. Cited local case of voter intimidation.</p> <p>No data support - anecdotal references.</p> <p>No prosecuted cases of polling place fraud, <b>"but it does happen"</b>.</p> <p>No data source.</p> <p>Wisconsin case in spring of 2003 or 2004.</p> <p>Securing the Vote report</p> <p>Brennan Center report.</p> <p>No data source.</p>
<p>New Identification requirements are the modern version of voter intimidation and suppression.</p>	<p>Joe Rich</p> <p>Wade Henderson</p> <p>Bill Groth</p> <p>Heather Dawn Thompson</p>	<p>No data source.</p> <p>No data source.</p> <p>No data source.</p> <p>Cases in <b>South Dakota</b> – No ID, can't vote; some voters lived up to 60 miles away and suppression by party structures.</p> <p>Cases in <b>Minnesota</b> – would not allow tribal ID.</p>


029975



<p>Native American communities</p>	<p>Heather Dawn Thompson</p> <ul style="list-style-type: none"> <li>• Power of the native vote and active participation has resulted in an increase in intimidation tactics.</li> <li>• Non-Indians running elections in Native communities.</li> <li>• Photo ID</li> <li>• Poll Monitoring</li> <li>• Vote Buying and Fraud</li> </ul> <p>Rebecca Vigil-Giron</p>	<p><b>Washington State</b> 2000 Cantwell election &amp; <b>South Dakota</b> 2002 Johnson election where Native American voters made a difference.</p> <p><b>South Dakota</b></p> <p>See above Voter ID.</p> <p>U.S. Attorney chose Election Day to give out subpoenas.</p> <p>No data source.</p> <p>No data source</p>
------------------------------------	--	---

029970


**Jeannie Layson /EAC/GOV**  
04/12/2007 10:51 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request 

Peg,  
No problem. I will cull from what you sent earlier. I just wanted to make sure there were no other records that had been generated since then.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
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Phone: 202-566-3100  
www.eac.gov  
Margaret Sims/EAC/GOV

**Margaret Sims /EAC/GOV**  
04/12/2007 10:45 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Re: FOIA Request 

Jeannie:

I haven't had any relevant emails with Job or Tova that occurred after the batch I gave you in response to the Brennan Center FOIA. I last heard from Tova in August 2006 and included that message in the stuff I sent you earlier. Job and I corresponded in February 2007 about how his pay had been reported (what amounts were reported in which tax year). As there was no discussion of the research project itself, I don't think that is relevant.

If you could reuse the information I provided last time, I would really appreciate it. (It took me hours to pull that together and I would rather not have to repeat that.) I think the stuff I sent you earlier also included correspondence with Working Group and other folks outside of the EAC, which would need to be culled.. — Peggy

Jeannie Layson/EAC/GOV

**Jeannie Layson /EAC/GOV**  
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, jthompson@eac.gov, klynndyson@eac.gov, psims@eac.gov, sbanks@eac.gov, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV, bwhitener@eac.gov, stephanie.wolson@gmail.com  
cc  
Subject FOIA Request

029977

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029978

Jeannie Layson /EAC/GOV  
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.

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bcc

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[www.eac.gov](http://www.eac.gov)

029979

Jeannie Layson /EAC/GOV  
04/11/2007 01:04 PM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV  
cc  
bcc  
Subject Fw: new foia

Okay... I think this is manageable.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

— Forwarded by Jeannie Layson/EAC/GOV on 04/11/2007 01:02 PM —



"Gordon, Greg"  
<ggordon@mcclatchydc.com  
>  
04/11/2007 10:32 AM

To jlayson@eac.gov  
cc  
Subject new foia

April 11, 2007

Ms. Jeannie Layson  
Director of Communications  
Suite 110  
1225 New York Avenue NW  
Washington, D.C. 20005  
Fax: 202-566-3127  
Phone: 202-566-3100  
[HAVAinfo@eac.gov](mailto:HAVAinfo@eac.gov)

Dear Ms. Layson:

This is an official request under the Freedom of Information Act, 5 U.S.C., 552 as amended.

I am writing on behalf of McClatchy Newspapers to request copies of all emails between Job Serebrov and Elections Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for the EAC.

029980

In the event that this request results in research or copying, McClatchy Newspapers requests a public interest fee waiver because the material being sought is likely to be used in a newspaper story. We would argue strongly that there is a significant public interest in our reviewing the material being sought. As the nation's second largest newspaper group with 32 daily newspapers and a new service serving 400 newspapers, McClatchy easily qualifies as acting in the public interest.

If possible, I would appreciate your expediting this request, especially any emails transmitted after the draft report was submitted, because of the obvious topical import of these documents.

Should this letter prompt questions, please feel free to phone me at 202-383-0005. Thanks for your assistance.

Sincerely,

Gregory Gordon  
McClatchy Newspapers  
Washington correspondent

Greg Gordon  
National Correspondent  
McClatchy Newspapers Washington Bureau  
202-383-0005  
[ggordon@mcclatchydc.com](mailto:ggordon@mcclatchydc.com)

**Visit McClatchy's 31 daily newspapers, including the Miami Herald, Sacramento Bee, Ft. Worth Star-Telegram, Kansas City Star, Charlotte Observer, Raleigh News & Observer and others, at [www.mcclatchy.com](http://www.mcclatchy.com).**

029931

Gavin S. Gilmour/EAC/GOV  
04/11/2007 11:52 AM

To Jeannie Layson/EAC/GOV, Juliet E.  
Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject An unsolicited thought/statement

*The stated purpose of the EAC's recently released "fraud report" was not to draw conclusions about fraud, but determine how the subject should be studied by the EAC. As such, it would inappropriate for the EAC to make unsupported conclusions regarding fraud in its preliminary report. Such speculative statements would only serve to compromise its future effort to study this matter in a nonpartisan fashion.*

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

029932

Jeannie Layson /EAC/GOV

To EAC Personnel

04/11/2007 10:58 AM

cc

bcc

Subject EAC Statement

Hello everyone,

I'm sure you have read the article in today's NYT about the voter fraud report this agency issued. Today, Congressmen Hinchey and Serrano have issued the following statement. Very shortly, EAC will post and distribute the attached statement to articulate our role and approach to conducting research and the steps we will take to improve our process. Please let me know if you have any questions about this, as I am sure we will all receive phone calls today about this issue. You may also direct people with questions to the statement that will be on the website. I will keep everyone informed as this situation evolves.



2007-11 [ 4-11-07 ] Statement on Research & Contracting Policies.pdf

For  
Immediate  
Release

April 11, 2007

## **Hinchey, Serrano Urge Non-Partisanship, Greater Transparency at Election Assistance Commissic**

**Washington, DC** - Today, Congressmen Maurice Hinchey (NY-22) and José E. Serrano (NY-16) urged the Election Assistance Commission (EAC) to act with greater transparency and without partisanship. The comments from the congressmen came as the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released.

"The EAC has an obligation to be forthright with the American people and operate transparently and in a non-partisan manner," said Congressman Hinchey, who requested the draft report from EAC Commissioner Donetta L. Davidson during subcommittee hearing last month. "The draft report was commissioned with taxpayer dollars upon a mandate from Congress so that we could learn more about voter fraud and intimidation. The need for this report is even more clear when we see the way in which the Bush administration is carrying out the electoral process and how this system is sliding towards corruption. In hiding a draft report from the public that is significantly different from the final version, the EAC has created a lot more questions than it has answered while stunting debate on the issue. In order for our democracy to function properly it is essential that our elections are free of any corruption and that includes ensuring that the EAC does not work to benefit one political party over the other. To achieve that goal we must have all the facts and opinions on the table, not just

029933



some of them. The EAC must never limit discussion and debate.”

“The EAC is charged with helping to ensure our elections are trustworthy and administered fairly,” said Congressman Serrano, who is Chair of the Appropriations Subcommittee that oversees the EAC budget. “I’m concerned if changes were made to the report on voter fraud because of partisan bias rather than impartial analysis. When you read the draft report side-by-side with the final version, it is clear that important conclusions of the experts who wrote the draft report were excluded from the final product. Among the excluded information is an analysis that undermines the notion that voter fraud is rampant

“I am concerned that the EAC did not publicly release the taxpayer-funded draft report, and I worry that political considerations may have played a role. We cannot have a politicized EAC, or one that yields to outside pressure. Our democracy, and the American people’s faith in it, is far more important than any short-term political advantage.”

The draft report was written by outside experts under contract with the EAC. The final report was entitled “Election Crimes: An Initial Review and Recommendations for Future Study” and was issued on December 7, 2006.

The EAC is an independent bipartisan commission created by the 2002 Help America Vote Act in order to disburse funds to the states for the purchase of new voting systems, certify voting technologies, develop guidelines and serve as an information resource for election administration.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC Statement Regarding Research and Contracting Policies**

### ***Commission to Review Internal Procedures***

For Immediate Release  
April 11, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**WASHINGTON** – The Help America Vote Act of 2002 (HAVA) directs the Election Assistance Commission (EAC) to serve as a national clearinghouse and resource by, among other things, conducting studies with the goal of improving the administration of federal elections. To fulfill this mandate, the EAC has entered into contracts with a variety of persons and entities. Reports adopted by the EAC, a bipartisan federal entity, are likely to be cited as authoritative in public discourse. Prior to the EAC's adopting a report submitted by a contractor, the EAC has the responsibility to ensure its accuracy and to verify that conclusions are supported by the underlying research.

The Commission takes input and constructive criticism from Congress and the public very seriously. We will take a hard look at the way we do business. Specifically, we will examine both the manner in which we have awarded contracts and our decision-making process regarding the release of research and reports. The EAC takes its mandates very seriously, and we will continue to move forward in a bipartisan way to improve the way America votes.

*EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.*

###

029985

Jeannie Layson /EAC/GOV

04/11/2007 10:26 AM

To StricklerL@cbsnews.com

cc

bcc

Subject your questions

Laura,

The fraud and intimidation research contract was for \$147,106, and the voter ID and provisional voting research contract was \$560,002. Voter ID was only part of the contract. It also tasked Eagleton to provide information about provisional voting practices. In Oct. 2006, the Commission issued provisional voting best practices.

Please let me know if you need anything else, and I'll send you the statement as soon as it's ready to go.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

02993E

Jeannie Layson /EAC/GOV  
04/06/2007 05:58 PM

To wendy.weiser@nyu.edu  
cc  
bcc  
Subject FOIA letter

Ms. Weiser,

The letter is attached. The person who mailed it had already left for the day, but I will check with her first thing Monday to determine the status of the mailing. Thanks for your patience and for bringing this to my attention. Have a good weekend.



Brennan 03-27-07.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

029987



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

March 29, 2007

Ms. Wendy R. Weiser  
Deputy Director, Democracy Program  
Brennan Center for Justice  
161 Avenue of the Americas, 12<sup>th</sup> Floor  
New York, NY 10013

Dear Ms. Weiser:

This letter is in response to your Freedom of Information Act (FOIA) request received by the U.S. Election Assistance Commission (EAC) on November 13, 2006. The request sought certain agency records concerning two agency draft reports, *The Voter Fraud and Intimidation Report* and *The Voter Identification Report*. Specifically, the request sought: (1) "the report on voter identification prepared by the Eagleton Institute of Politics and the Moritz College of Law," (2) "the report on voter fraud and voter intimidation prepared by Tova Wang and Job Serebrov," (3) The voter identification and voting fraud report requests for proposals and contracts, and (4) communications relating to the above reports between the EAC and Eagleton Institute of Politics, the Moritz College of Law, Ms. Tova Wang, Mr. Job Serebrov, or other third parties.

**Responsive records.** On December 12, 2006, we provided a partial response to your request regarding items (1) through (3) above. In regard to item (4), copies of the responsive documents are attached (approximately 1,500 pages). Upon review of the records, you will find a few places where small portions of information have been redacted (in black). As required by FOIA exemption 6, the EAC has redacted personal information, including home addresses, telephone numbers, personal e-mail addresses, personal financial information, social security numbers, and tax identification numbers.

**Withheld records.** In reference to item (4) an estimated 300 pages of e-mails have been withheld because the information in these e-mails is pre-decisional and protected by the Deliberative Process Privilege for the same reasons discussed in our December 12, 2006 letter, which I have attached.

The EAC has decided to waive the processing fees for your request. If you interpret any portion of this response as an adverse action, you will have an opportunity to appeal it to the Election Assistance Commission. However, as this letter is only partially responsive to your request, please hold any appeal until your request has been fully addressed. At that time, your appeal must be in writing and sent to the address noted on the above letterhead. Any appeal submitted, must be postmarked no later than 60 calendar days from the date of EAC's final response letter.

Please include your reasons for reconsideration and attach a copy of this and subsequent EAC responses.

Sincerely,

Jeannie Layson  
Director of Communications  
U.S. Election Assistance Commission

**Attachments:**

1. Your Request Letter (dated November 8, 2006)
2. EAC's Response Letter (dated December 12, 2006)
3. Responsive Documents

Bryan Whitener /EAC/GOV  
04/05/2007 08:48 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC

cc

bcc

Subject Fw: Board agenda docs

Here are the docs we sent to USA Today.

----- Forwarded by Bryan Whitener/EAC/GOV on 04/05/2007 08:42 AM -----

Bryan Whitener /EAC/GOV  
09/27/2006 05:56 PM

To rwolf@usatoday.com

cc Jeannie Layson/EAC/GOV@EAC

Subject Board agenda docs

Rich,

When you get to the point you need to speak with anyone for attribution, please let me know and I'll check with our spokesperson, Jeannie Layson. As we discussed, here are the docs you asked about that were presented at the board meetings in May and links to the meeting agenda. There are two reports: (1) a draft report produced by Eagleton Institute concerning provisional voting; and (2) a status report produced by EAC contractors regarding research being conducted on voter fraud and intimidation. The reports were presented by the contractors to the Standards Board and Board of Advisors for their input. This type of input is required for any guidance issued by EAC and is desired for any product that we provide to the election community and the public. Based on the input that was received from these boards, particularly regarding the questionable information contained in Eagleton's provisional voting report, EAC has not issued the Eagleton draft report as a final EAC document. As for the voter fraud and intimidation status report, it is merely an update by EAC staff on the status of the research conducted by the EAC contractors. A report and recommendations on future actions regarding this topic will be produced after EAC review of the preliminary research.

Please do not hesitate to contact me if I can be of further assistance.

---

Bryan Whitener  
U.S. Election Assistance Commission  
(202) 566-3118  
(866) 747-1471 (toll free)



VF-VI Study Status 5-17-06.pdf



PV-Standard Board 5-12-06.pdf

05/23/06 to 05/24/06 - Agenda: EAC Standards Board Meeting

05/23/06 to 05/24/06 - Agenda: EAC Board of Advisors Meeting

###

029990



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

**029991**



## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

### NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

#### Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio, and Pennsylvania.

#### **"Dead Voters and Multiple Voting"**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.



As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

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National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

**Report to the  
U. S. Election Assistance Commission  
On  
Best Practices to Improve Provisional Voting  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252**

May 12, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

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**FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

**Report to the  
U. S. Election Assistance Commission**

**Best Practices to Improve Provisional Voting**

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For Review by the Standards Board and Board of Advisors  
**The Research Team**

This research report on Provisional Voting in the 2004 election is part of a broader analysis that also includes a study of Voter Identification Requirements, a report on which is forthcoming. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

### **Project Management Team**

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The Peer Review Group improved the quality of our work by critiquing drafts of our analysis, conclusions and recommendations. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in the policy recommendations of the report.

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## EXECUTIVE SUMMARY

### Background and Methodology

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005.

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.<sup>1</sup> The process HAVA outlined left considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction (precinct or larger unit) the ballot must be cast in order to be counted.<sup>2</sup>

The general requirement for provisional voting is that, if a registered voter appears at a polling place to vote in an election for Federal office, but either the potential voter's name does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, that potential voter must be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the EAC's Election Day Survey, "first-time voters who registered by mail without identification and cannot provide identification, as required under HAVA. . ." <sup>3</sup> HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. Election administrators are required by HAVA to notify individuals of their opportunity to cast a provisional ballot.

<sup>1</sup>The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See [www.electioncenter.org](http://www.electioncenter.org).

<sup>2</sup> The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6<sup>th</sup> Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

<sup>3</sup> The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.html>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004.)

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Our research began in late May 2005. It focused on six key questions raised by the EAC.

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.<sup>4</sup>
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

### KEY FINDINGS

#### Variation among the states

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63%, were counted. Provisional ballots accounted for a little more than 1% of the final vote tally. These totals obscure the wide variation in provisional voting among the states.<sup>5</sup>

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<sup>4</sup> Attachment 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures. It also describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

<sup>5</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

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- Six states accounted for two-thirds of all the provisional ballots cast.<sup>6</sup>
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.
- States with voter registration databases counted, on average, 20% of the provisional ballots cast.
- States without databases counted ballots at more than twice that rate: 44%.<sup>7</sup>
- States that provided more time to evaluate provisional ballots counted a greater proportion of those ballots. Those that provided less than one week counted an average of 35.4% of their ballots, while states that permitted more than 2 weeks, counted 60.8%.

An important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>8</sup>

### Variation within states

Within states, too, there was little consistency among different jurisdictions. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot.

Resources available to administer provisional voting varied considerably among and within states. Differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.

<sup>6</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>7</sup> As the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without." Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

<sup>8</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

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- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be managed poorly. Provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

### **The lessons of litigation**

Successful legal challenges highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. Most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots. This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right --the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

### **States move to improve their processes**

Shortly after the 2004 election, several states came to the conclusion that the administration of their provisional voting procedures needed to be improved, and they amended their statutes. The new legislation highlights areas of particular concern to states about their provisional voting process.

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.
- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices that draw on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

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### SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

#### Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

#### Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendation section of this report could be helpful. Among those questions are:

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

#### Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

#### Assess each stage of the provisional voting process

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Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for best practices to avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Best practice would be for states should provide guidelines (as do Connecticut and Delaware) to estimate the supply of provisional ballots needed at each polling place.

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.
- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

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- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

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### Provisional Voting in 2004

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.

These totals obscure the wide variation in provisional voting among the states.<sup>9</sup> Six states accounted for two-thirds of all the provisional ballots cast.<sup>10</sup> State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted provisional ballots at more than twice that rate, 44%.

An important source of variation was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>11</sup>

- The percentage of the total vote cast as provisional ballots averaged more than 2% in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.<sup>12</sup>
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states had their ballots counted more frequently than those in the new states. This experience effect is evidence that there is room for improvement in provisional balloting procedures, especially in those states new to the process.<sup>13</sup> That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

<sup>9</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

<sup>10</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>11</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

<sup>12</sup> To compensate for the wide differences in vote turnout among the 50 states the average figures here are calculated as the mean of the percent cast or counted rather than from the raw numbers of ballots cast or counted.

<sup>13</sup> Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time limit to process provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC can facilitate the exchange of experience among the states and can offer all states information on more effective administration of provisional voting.

Concluding optimistically that experience will make all the difference, however, may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Our current understanding of how provisional voting worked in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. The training they offer poll workers about provisional ballots may not be as frequent or effective as in other states. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.<sup>14</sup>
2. "Old" states may devote fewer resources to updating their registration files or databases because they consider provisional ballots as a reasonable fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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<sup>14</sup> Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election." Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.



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- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit.<sup>15</sup>
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>16</sup> In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.<sup>17</sup>

<sup>15</sup> See Table 2 in Appendix 2 for information on the verification method used in each state.

<sup>16</sup> The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

<sup>17</sup> The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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- In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
- If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.<sup>18</sup>
- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.<sup>19</sup>
  - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks<sup>20</sup>.
  - Those states that permitted less than one week counted an average of 35.4% of their ballots.
  - States that permitted between one and two weeks counted 47.1%.
  - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast<sup>21</sup>.
  - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

### Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors beyond statewide factors, such as verification requirements or the time provided for ballot evaluation, also influence the provisional voting process. Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."<sup>22</sup>

Election Line reported that:

<sup>18</sup> This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

<sup>19</sup> See Appendix \_\_, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

<sup>20</sup> Many thanks to Ben Shepler, of the Moritz College of Law, for assembling complete data on the time requirements states permitted for the counting of provisional ballots.

<sup>21</sup> 43 states are included in this analysis, including Washington D.C. The 7 election-day registration states are omitted, as is Mississippi, which never provided data on provisional ballots. North Carolina is also omitted from the regressions, as it does not have a statewide policy on how it verifies provisional ballots.

<sup>22</sup> Recommendation 2.3.2 of the Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report also observed that, "...different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

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- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important in such districts. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

### **Effectiveness of Provisional Voting**

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. Information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not

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made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

<b>Votes Lost (Millions)</b>	<b>Cause</b>
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

**Table 1 Cal Tech – MIT Voting Technology Project Estimates**

4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. In 2004, about 1.2 million provisional voters were counted. A rough estimate, then, of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)<sup>23</sup>. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

### Legislative Response

Indeed, several states<sup>24</sup> came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

<sup>23</sup> Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems. After each election the CPS asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

<sup>24</sup> Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

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Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.<sup>25</sup>

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

### Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right --the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to

<sup>25</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots.*" The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

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determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

### **RECOMMENDATIONS**

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use of provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have voted provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

#### **Recommendations for Best Practices**

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

#### **Self-evaluation of Provisional Voting –4 Key Questions**

The first need to achieve greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

### Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

#### The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."<sup>26</sup>

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.<sup>27</sup> Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.<sup>28</sup>

<sup>26</sup> The Century Foundation, *Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms*, July 2005.

<sup>27</sup> See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

<sup>28</sup> See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even

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- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.<sup>29</sup> Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers may need appropriate training to understand their duty to give such voters a provisional ballot.<sup>30</sup>

### A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."<sup>31</sup>
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.<sup>32</sup>
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

### B. At the Polling Place

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wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

<sup>29</sup> *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6<sup>th</sup> Cir. 2004)

<sup>30</sup> *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

<sup>31</sup> Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

<sup>32</sup> The Century Foundation, *op. cit.*

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Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>33</sup> Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>34</sup> A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>35</sup> At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>36</sup> States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

<sup>33</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>34</sup> 2005 N.M. Laws 270 page no. 4-5.

<sup>35</sup> Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

<sup>36</sup> Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

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### C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."<sup>37</sup> Nonetheless, the *Panio v. Sutherland*<sup>38</sup> decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.<sup>39</sup>
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.<sup>40</sup> While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the

<sup>37</sup> The Century Foundation, *op. cit.*

<sup>38</sup> 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

<sup>39</sup> In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

<sup>40</sup> See Andersen, *op. cit.*, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

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additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.<sup>41</sup> Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.<sup>42</sup>

### Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who

<sup>41</sup> Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

<sup>42</sup> 8 CCR 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.

RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

### D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

### E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

### F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

### Broader Considerations

#### G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.

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2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

### H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma<sup>43</sup> or the Baldrige Quality process<sup>44</sup> to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
  - Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
  - Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
  - Measures of variance among jurisdictions.
  - Number of poll workers trained in administration of provisional voting by polling place
  - Number of jurisdictions posting information on provisional voting in the polling place
  - Time required to evaluate ballots by jurisdiction

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<sup>43</sup> Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

<sup>44</sup> The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

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Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

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### ATTACHMENT 1 – Data Sources for Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state's use of provisional ballots:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and included it in our analysis.

#### New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting,<sup>45</sup> but condensed its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We included in the list of "Old States" all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as "new" states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they

<sup>45</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

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were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline's map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct's list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter's name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island's first use of provisional voting was in 2004 and, therefore, classified the state as "new" to the system of provisional balloting.

<b>Old States</b>	<b>New States</b>	<b>HAVA Exempt or NA</b>
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
26	18	7

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### Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>46</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

### Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois <sup>47</sup>	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
17	26	7

<sup>46</sup> "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

<sup>47</sup> In Illinois, it is not clear that all counties followed this procedure. Some counties may not have counted out-of-precinct ballots.

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For Review by the Standards Board and Board of Advisors

## Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

<b>Signature Match</b>	<b>Data Match</b>	<b>Affidavit</b>	<b>Return with ID</b>	<b>NA</b>
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

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For Review by the Standards Board and Board of Advisors

## Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>48</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>49</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>50</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>48</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>49</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>50</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

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For Review by the Standards Board and Board of Advisors

### Data Differences

The data used in this study differ from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State? <sup>51</sup>
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	53,698/26,092	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No

<sup>51</sup> Data not provided by the state itself is taken from Electionline figures.

030035

**Jeannie Layson /EAC/GOV**  
04/05/2007 08:46 AM

To Bryan Whitener/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Response to USA Today request

We are aware of what it is. She needed it yesterday, so I'll take care of it now that I'm in the office.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Bryan Whitener/EAC/GOV

**Bryan Whitener /EAC/GOV**  
04/05/2007 08:41 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC  
cc  
Subject Fw: Response to USA Today request

FYI, before I send you the document from Peggy, please see the description below that describes what was presented to board  
"...items from the notebook given to board members: Tab 11 on Provisional Voting and Tab 13 on Voter Fraud."

----- Forwarded by Bryan Whitener/EAC/GOV on 04/05/2007 08:37 AM -----

**Bryan Whitener /EAC/GOV**  
09/27/2006 01:47 PM

To Margaret Sims/EAC/GOV, Karen Lynn-Dyson/EAC/GOV,  
Thomas R. Wilkey/EAC/GOV, Juliet E. Hodgkins/EAC/GOV,  
Gavin S. Gilmour/EAC/GOV  
cc Jeannie Layson/EAC/GOV@EAC  
Subject Response to USA Today request

All,

Richard Wolf of USA Today called again today. I told him I would send him the documents made public at the advisory board meeting in May. I'm sending the following items from the notebook given to board members: Tab 11 on Provisional Voting and Tab 13 on Voter Fraud.

Bryan

----- Forwarded by Bryan Whitener/EAC/GOV on 09/27/2006 01:43 PM -----

**Bryan Whitener /EAC/GOV**  
09/22/2006 05:10 PM

To Margaret Sims/EAC/GOV, Karen Lynn-Dyson/EAC/GOV,  
Thomas R. Wilkey/EAC/GOV, Juliet E. Hodgkins/EAC/GOV,  
Gavin S. Gilmour/EAC/GOV

030036

cc Jeannie Layson/EAC/GOV@EAC  
Subject Media request - USA Today

All

Richard Wolf of USA Today called and asked for the following. Jeannie and I ask that you consider this carefully and let us know ASAP what to provide .

(1) The status report on voter fraud and consultant update that was presented to the advisory boards in May, 2006.

(2) The status of the required guidance document on provisional voting and voter ID that is referenced in the following passage in today's Electionline Weekly by Doug Chapin.

In addition to the EAC's considerable election management responsibilities (especially in the area of voting equipment certification and testing), the agency has key policy issues to resolve in the immediate to near-term future, including a required guidance document on provisional voting and voter ID (now nearly two years overdue) and continued regulatory oversight over state implementation of "motor voter". This latter issue will almost certainly involve questions about the intersection of state and federal laws on voter registration - questions which divided the Commission when applied to Arizona, and could divide it again as Republicans and Democrats continue their traditional struggle to balance access to the franchise with concerns about the potential for fraud at the polls.

Thanks,  
Bryan

030037

Juliet E. Hodgkins/EAC/GOV  
04/04/2007 05:38 PM

To Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov  
cc  
bcc  
Subject Fw: Revised summaries of interviews with Donsanto and  
Tanner

Take a look at these and see if you agree that the changes are technical.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/04/2007 05:34 PM -----

Juliet E. Hodgkins/EAC/GOV

12/01/2006 03:23 PM

To Paul DeGregorio, Gracia Hillman, Donetta Davidson, Thomas R. Wilkey/EAC/GOV  
cc jlayson@eac.gov  
Subject Revised summaries of interviews with Donsanto and Tanner

Commissioners,

Per your request, please see attached the proposed edits to the summaries of the interviews with Craig Donsanto and John Tanner.

Please get me your comments by Monday COB so that we can finalize this document in time for the meeting next week.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

030038

**Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice**  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

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*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating



factor, making it more likely the department will take it over

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### *What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

### *Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

### *What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

### *Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public.

Deleted: (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

### Cases

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030040

Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

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If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

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Deleted: Charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.  
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1. Felon voters in Milwaukee.

2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

Interview with John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

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February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Deleted: Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.¶

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

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When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

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Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

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Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands

of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations


Mr. Tanner did not feel it was appropriate to make recommendations.

Note: We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

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Jeannie Layson /EAC/GOV  
04/02/2007 11:55 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: the aftermath 

They already have, and asked me not to share it and to delete it.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/02/2007 11:51 AM EDT  
**To:** Jeannie Layson  
**Subject:** Re: the aftermath

Wonder how long it will take them to realize that they sent this to you?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 04/02/2007 11:58 AM EDT  
**To:** Tom Wilkey; Juliet Hodgkins  
**Subject:** Fw: the aftermath

Tim from Eagleton sent me this email by mistake. Interesting...

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

----- Forwarded by Jeannie Layson/EAC/GOV on 04/02/2007 11:55 AM -----  
"Thomas O'Neill" <[tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net)>

04/02/2007 11:41 AM

To [jlayson@eac.gov](mailto:jlayson@eac.gov)  
cc  
Subject RE: the aftermath

030045

John, Based on the 6 article Layson sent and the others that I distributed over the weekend, I conclude this: We lost the battle, but won the war.

I am concerned about the news that Rush Holt's election reform bill would make the EAC permanent. Perhaps we could arrange to talk to him during the 2 week House Easter break and make some suggestions about how the EAC should be restructured before it is made permanent. (Ray Martinez would, I believe, have much to contribute on that topic.)

Tom

---

**From:** jlayson@eac.gov [mailto:jlayson@eac.gov]  
**Sent:** Monday, April 02, 2007 10:56 AM  
**To:** tim.vercellotti@rutgers.edu; john.weingart@rutgers.edu  
**Subject:** the aftermath

I'm sure both of you have already seen the commentary, but just in case you haven't, here it is. Also, I'll let you know if I get any more inquiries about it. Thanks again.

- [Congressman Maurice Hinchey Statement on U .S. Election Assistance Commission 's Release of Report on Voter Identification Issues](#)
- [EAC Finally Releases Previously Withheld , 9 Month Old Report on 'Voter ID' Concerns After Congressional Prodding](#)
- [BREAKING: Federal Election Agency Plays Politics with Voter ID Study](#) ( EAC voter ID study )
- [Project Vote: Federal Election Agency Plays Politics With Voter ID Study](#) ( more Project Vote )
- [Is The EAC Being Appropriately Cautious or Cowardly on Voter Identification Research ?](#) ( Rick Hasen )
- [Conflicted loyalties ?](#) ( Donna Brazile: EAC "....can't even agree upon a definition of 'voter fraud,' much less prove its existence" )

Jeannie Layson  
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030046

Jeannie Layson /EAC/GOV  
04/02/2007 10:55 AM

To tim.vercellotti@rutgers.edu, john.weingart@rutgers.edu  
cc  
bcc

Subject the aftermath

I'm sure both of you have already seen the commentary, but just in case you haven't, here it is. Also, I'll let you know if I get any more inquiries about it. Thanks again.

- **Congressman Maurice Hinchey Statement on U .S. Election Assistance Commission 's Release of Report on Voter Identification Issues**
- **EAC Finally Releases Previously Withheld , 9 Month Old Report on 'Voter ID' Concerns After Congressional Prodding**
- **BREAKING: Federal Election Agency Plays Politics with Voter ID Study ( EAC voter ID study )**
- **Project Vote: Federal Election Agency Plays Politics With Voter ID Study ( more Project Vote )**
- **Is The EAC Being Appropriately Cautious or Cowardly on Voter Identification Research ? ( Rick Hasen )**
- **Conflicted loyalties ? ( Donna Brazile: EAC "...can't even agree upon a definition of 'voter fraud,' much less prove its existence" )**

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030047



Rosemary E.  
Rodriguez/EAC/GOV  
03/30/2007 03:23 PM

To jlayson@eac.gov  
cc  
bcc  
Subject Fw: Fraud Report

Rosemary E. Rodriguez  
Commissioner  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

--- Forwarded by Rosemary E. Rodriguez/EAC/GOV on 03/30/2007 03:21 PM ---  
Rosemary E. Rodriguez/EAC/GOV

03/30/2007 03:20 PM

To DDavidson@useac.gov, GHillman@useac.gov, CHunter@useac.gov  
cc TWilkey@useac.gov  
Subject Fraud Report

I would very much like to explore the possibility of reconsidering the decision to release the Fraud Report.  
How can I get this on our agenda?

Rosemary E. Rodriguez  
Commissioner  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
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Washington, D.C. 20005  
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Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

030048

Jeannie Layson /EAC/GOV

03/30/2007 01:00 PM

To wendy.weiser@nyu.edu

cc

bcc

Subject Voter ID information

Ms. Weiser,

The press release and the Eagleton draft report are attached. Please let me know if I can be of further assistance. My direct number is 202-566-3103.



VoterID release 3-30-07.doc VoterIDReport 062806.pdf

Jeannie Layson

U.S. Election Assistance Commission

1225 New York Ave., NW

Suite 1100

Washington, DC 20005

Phone: 202-566-3100

www.eac.gov

030049



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC to Launch Comprehensive Study of Voter ID Laws**

For Immediate Release  
March 30, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**WASHINGTON** – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research it received in a report, which focused on only one election cycle, was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public.

The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, are available at [www.eac.gov](http://www.eac.gov). The Commission's statement regarding its decision is attached.

“After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle,” said EAC Chair Donetta Davidson. “The Commission and our contractor agree that the research conducted for EAC raises more questions than provides answers.”

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by the contractor as well as additional data from the states to develop this baseline.

030050

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.
- Study how voter identification provisions that have been in place for two or more federal elections have impacted voter turnout, voter registration figures, and fraud.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

030051

# **EAC Statement on Study of Voter Identification Requirements**

## **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics (“Contractor”) to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor’s testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC’s website, [www.eac.gov](http://www.eac.gov).

## **EAC Declines to Adopt Draft Report**

EAC finds the Contractor’s summary of States’ voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission’s efforts to study the possible impact of voter identification requirements.

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<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

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<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.



**Report to the**  
**U. S. Election Assistance Commission**  
**On**  
**Best Practices to Improve Voter Identification Requirements**  
**Pursuant to the**  
**HELP AMERICA VOTE ACT OF 2002**  
**Public Law 107-252**

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University

030055



**Report to the  
U. S. Election Assistance Commission**

**Best Practices to Improve Voter Identification Requirements**

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<b>Appendix E: State Statutes and Regulations Affecting Voter Identification     (included in electronic form only)</b>	

## The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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### **Peer Review Group**

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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# **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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## **Report Background**

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

### Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters –such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate. It inquires whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout. That analysis would constitute an important first step in assessing tradeoffs between ballot security and ballot access. The aim of this research is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis examined the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information (such as the specific reasons some potential voters are not allowed to cast a regular ballot) that that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on

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turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:<sup>1</sup> the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.<sup>2</sup> Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, the different statistical methods and two different sets of data on turnout in 2004 election used in the study point to the same general finding. Stricter voter identification requirements (for example, requiring voters to present non-photo ID compared to simply stating their names) were correlated with reduced turnout in the models employed, as described in detail in Appendix C.<sup>3</sup> As explained below, these models find that a statistically

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<sup>1</sup> See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

<sup>2</sup> The EAC has contracted with other researchers to study vote fraud issues.

<sup>3</sup> Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*. Using the aggregate data, photo ID did not have a significant effect on turnout, possibly because in the

significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. (But note that in the model using the aggregate data, photo ID did not have a significant effect on turnout. The reason may have been that in this election, each state with a photo ID requirement provided an alternate way for those without a photo ID to cast a regular ballot.) Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible voters, however, the tradeoffs between ballot security and ballot access cannot be assessed.

### Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.<sup>4</sup> The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state

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2004 election every state requiring photo ID provided an alternative way to cast a regular ballot for those voters who lacked photo identification. The individual data from the Current Population Survey did show a significant effect, but only for the overall sample and for white voters, which may be an artifact of the large sample size.

<sup>4</sup> Even the most relaxed provisions for identification at the polls –anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

challenge process). We have included “maximum” requirements in our analysis, and not simply “minimum” requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the “maximum” of being asked to show photo ID may deter some voters even though the “minimum” would allow them to vote without photo ID.

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a “minimum” requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

### Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis’s aggregate data and the individual-level data, although not always



for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, for the maximum ID requirements, the match-signature requirement and the provide-a- non-photo-ID requirement, but not the photo ID requirement, were all correlated with lower turnout compared to requiring that voters state their names. When the registration closing deadline was added as an independent variable in the aggregate analysis, signature match and non-photo id remained significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a “maximum” requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a “minimum” requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the “on the ground” experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such

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knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>5</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

#### Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

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<sup>5</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. A "Voter Impact Statement" would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC might also use the information reported by the states to encourage further assessment by the states of the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
  - I. Useful information could be supplied by state-sponsored surveys of voters conducted by local election officials. Such surveys would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
  - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks

statutory or regulatory requirements. Such reports should be available to the public.

4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>6</sup>, and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is less certain.

## **SUMMARY OF RESEARCH**

### **Background and Approach of the Study**

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

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<sup>6</sup> Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.
- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.
- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.
- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

#### Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>7</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

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<sup>7</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>8</sup>

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>9</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that

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<sup>8</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

<sup>9</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>10</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>11</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

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<sup>10</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>11</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.



Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest seven questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>12</sup>
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>13</sup>
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>14</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>15</sup> A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

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<sup>12</sup> "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

<sup>13</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>14</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>15</sup> "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>16</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it, intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

### **Voter ID and Turnout**

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>17</sup> Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.<sup>18</sup>

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the

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<sup>16</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

<sup>17</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

<sup>18</sup> As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.<sup>19</sup> Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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<sup>19</sup> One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

**TABLE 1 – Voter ID Requirements<sup>20</sup>**

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID <sup>1</sup>	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID <sup>2</sup>	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID <sup>4</sup>	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

<sup>20</sup> See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>^^</sup>	Address & Registration
South Dakota	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>^^</sup>	Affidavit
Tennessee	Provide ID	Provide ID <sup>7</sup>	Provide ID	Affidavit
Texas	Provide ID	Provide ID <sup>b</sup>	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

\* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

<sup>1</sup> Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

<sup>2</sup> Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

<sup>3</sup> Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

<sup>4</sup> Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

<sup>5</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>6</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>7</sup> Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

<sup>8</sup> Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

### Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

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Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

**Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
<i>Average Turnout (All States)</i>	<b>60.9 %</b>		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables.<sup>21</sup> (Dichotomous variables reflect either the presence or absence of a characteristic. In the dummy variable for non-photo ID, a state would be coded as 1 if it required non-photo ID, and 0 otherwise.)

Voter identification requirements are just one factor that might affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American<sup>22</sup>
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering

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<sup>21</sup> The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

<sup>22</sup> The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

The dependent variable in each model using the aggregate data was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that the stricter voter identification requirements of matching one's signature to a signature on file with election authorities or presenting a non-photo ID are associated with lower turnout compared to turnout in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. (A "dummy variable" represents a particular attribute and has the value zero or one for each observation, e.g. 1 for male and 0 for female.) Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.<sup>23</sup>

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<sup>23</sup> This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.



Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum requirements, a signature match and non-photo identification –but not photo identification– were correlated at a significant level with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.<sup>24</sup> Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

#### Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>25</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens, who in this survey were not asked the voter registration and turnout questions. In

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<sup>24</sup> For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>24</sup> Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

<sup>25</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.<sup>26</sup> The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>27</sup>

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.<sup>28</sup> Table 3 below shows predicted probabilities (calculated from the probit

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<sup>26</sup> The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

<sup>27</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>28</sup> A probit model is a popular specification of a generalized linear regression model, using the probit link function.

coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>29</sup>

<b>Table 3. Predicted probability of voter turnout – all voters</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	91.7%	91.5%
<b>Sign name</b>	89.9%	90.2%
<b>Match signature</b>	Not significant	Not significant
<b>Non-photo ID</b>	89.0%	89.0%
<b>Photo ID</b>	88.8%	---
<b>Affidavit</b>	---	87.5%
<b>Total difference from “state name” to “photo ID” or “affidavit”</b>	<b>2.9%</b>	<b>4.0%</b>
<b>N</b>	54,973	
Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from stating one’s name to providing photo identification or an affidavit, with all other variables held constant.		
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one’s name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>30</sup> In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those with fewer years of education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum

<sup>29</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

<sup>30</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.<sup>31</sup> The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

More rigorous voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

#### Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data,

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<sup>31</sup> Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

In the aggregate data, the match-signature requirement and the provide-a-non-photo ID requirement were correlated with lower turnout compared to requiring that voters state their names. But the photo-ID requirement did not have an effect that was statistically significant, possibly because in 2004 each state requiring a photo-ID provided an alternative way to cast a regular ballot for voters who lacked that document.

In the model using the individual-level data the signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names (in the entire sample and for white voters, but the statistical significance may be an artifact of the very large sample size). That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day, or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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## Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*). Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.<sup>32</sup> Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a

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<sup>32</sup> Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

*Privacy.* In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a

balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

#### **Developments since 2004**

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgement in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

#### **State Voter Databases and Voter ID**

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the



Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

### **Conclusions**

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.<sup>33</sup>

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<sup>33</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

**APPENDIX A: SUMMARY OF VOTER IDENTIFICATION  
REQUIREMENTS BY STATE**

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## Voter ID Requirements

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	<p>(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification:</p> <p>(1) A current valid photo identification.</p> <p>(2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following:</p> <p>a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification.</p> <p>b. A valid United States passport.</p> <p>c. A valid Alabama hunting or fishing license.</p> <p>d. A valid Alabama permit to carry a pistol or revolver.</p> <p>e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States.</p> <p>f. A valid United States military identification card.</p> <p>g. A certified copy of the elector's birth certificate.</p> <p>h. A valid Social Security card.</p> <p>i. Certified naturalization documentation.</p> <p>j. A certified copy of court records showing adoption or name change.</p> <p>k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card").</p> <p>(c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b).</p> <p>(e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law.</p> <p>(f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs.</p>	Ala. Code § 17-11A-1
Alaska	Provide ID	<p>Effective Date: June 24, 2003</p> <p>(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including</p> <p>(1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or</p> <p>(2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this paragraph must show the name and current address of the voter.</p> <p>(b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under <u>AS 15.07.050</u>, and did not provide identification as required in <u>AS 15.07.060</u>.</p>	Alaska Stat. § 15.15.225

(c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.

effective June 17, 2003

Arizona Provide ID

B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot:

Ariz. Rev. Stat. Ann. § 16-579

1. The person shall present either one of the following:

(a) A current form of identification that bears a photograph of the person and the name of the person.

(b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person.

2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584.

Arkansas Provide ID

Effective Dec. 1, 2003  
7-5-305. Requirements.

Arkansas Code Annotated § 7-5-305

(a) Before a person is permitted to vote, the election official shall:

(1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list;

(2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate;

(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct;

(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;

(7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and

(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card.

030092<sup>3</sup>

(B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification.

(ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.

(iii) The prosecuting attorney may investigate possible voter fraud; and

(9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the person is a disabled voter and presents himself or herself to vote.

California

Sign Name

Effective: July 16, 2003

Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article.

Cal. Elec. Code  
§ 14216

(Enacted in 1994, no amendments since)

Colorado

Provide ID

(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges,  
\* \* \*

Colo. Rev. Stat.  
Ann. § 1-7-110;  
Colo. Rev. Stat.  
Ann. § 1-1-104

(4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title.

(19.5)(a) "Identification" means:

(I) A valid Colorado driver's license;

(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.;

(III) A valid United States passport;

(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;

(V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;

(VI) A valid United States military identification card with a photograph of the eligible elector;

(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;

(VIII) A valid medicare or medicaid card issued by the United States health care financing administration;

(IX) A certified copy of a birth certificate for the elector issued in the United States; or

(X) Certified documentation of naturalization.

(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.

Connecticut	Provide ID	Effective 5/28/2004 (a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by <u>section 9-23r</u> , shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	Effective May 10., 2004 (a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record.	15 Del. Code § 4937
D.C.	Sign Name	Effective: July 9, 2002 (i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection.  (2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection.  (3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records.	D.C. Code § 1-1001.07

(Effective April 3, 2001)(not added as part of 2005 amendment)

Florida

Photo ID

101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

West's Fla.  
Stat. Ann. §  
101.043  
& West's Fla.  
Stat. Ann. §  
97.0535

(2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49.

**97.0535** (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired:

1. Florida driver's license.
2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
3. United States passport.
4. Employee badge or identification.
5. Buyer's club identification.
6. Debit or credit card.
7. Military identification.
8. Student identification.
9. Retirement center identification.
10. Neighborhood association identification.
11. Entertainment identification.
12. Public assistance identification.

(b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant:

1. Utility bill.
2. Bank statement.
3. Government check.
4. Paycheck.
5. Other government document (excluding voter identification card).



Georgia

Provide ID

Version effective 1/1/2005-12/31/2005

(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

- (1) A valid Georgia driver's license;
- (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;
- (3) A valid United States passport;
- (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;
- (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business;
- (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia;
- (7) A valid Georgia license to carry a pistol or revolver;
- (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States;
- (9) A valid United States military identification card;
- (10) A certified copy of the elector's birth certificate;
- (11) A valid social security card;
- (12) Certified naturalization documentation;
- (13) A certified copy of court records showing adoption, name, or sex change;
- (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector;
- (15) A bank statement, or a legible copy thereof, showing the name and address of the elector;
- (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or
- (17) A government document, or a legible copy thereof, showing the name and address of the elector.

(b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement."

Ga. Code. Ann.  
§ 21-2-417

Hawaii

Photo ID

effective June, 2003

(b) The voter shall present valid identification to the official in charge of the pollbook.

Haw. Code. R.  
§ 2-51-80  
(Paper ballots;  
voting  
procedure at the  
polls), § 2-51-  
83 (Punchcard

ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b)  
  
Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix

***Do I Need an I.D. to Vote on Election Day?***

Yes. Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification.

From the 2004 version of the administrative code.

**§ 11-136 Poll book, identification, voting.**

Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.

HRS 11-136

After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting.

Last amended 2003.

Idaho

Sign Name

(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.

Id. St. §34-1106

(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein.

(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots.

Illinois

Give Name

(Last amended in 1972)

Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be

10 Ill. Comp. Stat. 5/17-9

cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.

Indiana

Sign Name

West's  
Annotated  
Indiana Code §  
3-11-8-25  
Iowa Code §  
49.77

Iowa

Sign Name

1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:

VOTER'S DECLARATION OF ELIGIBILITY

I do solemnly swear or affirm that I am a resident of the ..... precinct, ..... ward or township, city of ....., county of ....., Iowa.

I am a registered voter. I have not voted and will not vote in any other precinct in said election.

I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

\_\_\_\_\_  
Signature of Voter

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

Approved:

\_\_\_\_\_  
Board Member

2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person

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does not interfere with the functions of the precinct election officials.

3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.

A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

Kansas	Sign Name	(From 2004 version of Iowa Annotated Code; effective January 1, 1995) (b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention.  (Approved April 14, 2004, 2004 Kansas Laws Ch. 93)	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	117.227 Confirmation of voter's identity  Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification.  Effective: 7/15/02  31 KAR 4:010. Voter identification cards.  Section 1. In addition to the forms of identification specifically provided for by <u>KRS 117.227</u> , any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.	Ky Rev. Stat. Ann. 117.227  31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	A. Identification of voters.  (1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place.  (2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to <u>R.S. 40:1321</u> , or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in <u>R.S. 18:565</u> .  Effective: 1/1/2002	La. Rev. Stat. Ann. 18:562

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Maine	Give Name	<p>The voting procedure is as follows.</p> <p>1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice.</p> <p>(In effect at time of 2003 amendment: 2003, c. 584, § 9)</p>	Mc. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	<p>10-310.</p> <p>(a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall:</p> <p>(1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot;</p> <p>(2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or</p> <p>(ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article;</p> <p>(3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register;</p> <p>(4) verify the address of the voter's residence;</p> <p>(5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and</p> <p>(6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.</p>	Md. Elec. Law § 10-310
Mass.	Give Name	<p>Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited.</p> <p>Last amended in 1981</p> <p>(5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).</p>	Mass. Ann. Laws 54 § 76  950 Mass. Code Regs. 52.03
Michigan	Sign Name	<p>(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official.</p>	Mich. Comp. Laws Ann. § 168.523

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If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter

registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727.

(2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector.

The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies.

(Effective March 31, 1997)

Minnesota

Sign Name

(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not more than \$10,000, or both."

Minn. Stat. §  
204C.10

(b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth.

(c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots

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as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.

Mississippi	Sign Name	(Effective January 1, 2004) * * *	Miss. Code Ann. § 23-15- 541
		<p>When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance.</p>	
Missouri	Provide ID	(Effective January 1, 1987) 1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list:  (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state;  (2) Identification issued by the United States government or agency thereof;  (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri;  (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter;  (5) Driver's license or state identification card issued by another state; or  (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose.  (Last amended in 2002)	Mo. Rev. Stat. §115.427.1
Montana	Provide ID	(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter	Mont. Code. Ann. §13-13- 114(1)(a)

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registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [ Unrelated section was amended in 2005])

Nebraska Sign Name (1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document. Neb. Rev. Stat. § 32-913

(Last amended in 2003) Neb. Rev. Stat. § 32-914

Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter.

Nevada Match Sig. (Last updated in 2003) 1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2. Nev. Rev. Stat. § 293.277

2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are:

- (a) The card issued to the voter at the time he registered to vote;
- (b) A driver's license;
- (c) An identification card issued by the Department of Motor Vehicles;
- (d) A military identification card; or
- (e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture.

NH Give Name Last Amendment Effective Jan. 1, 2004. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the N.H. Rev. Stat. Ann. 659:13

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ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

New Jersey

Match Sig.

Last Amendment Effective July 2, 2002.

19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification

N.J. Stat. Ann.  
19:15-17

a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers.

b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery.

c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31- 6.4). shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5).

New Mexico

Sign Name

Last Amendment Effective July 9, 2004

D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.

N.M. Stat. Ann  
§1-5-10  
(Recompiled as  
§1-12 -7.1 by  
L. 2005, Ch.  
270, §63,  
effective July 1,  
2005)

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E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot.

G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.

(From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)

New York

Match Sig.

1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith.

N.Y. Law § 8-304  
(McKinney)

2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election.

3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature.

4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record.

5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise

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than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same  
Last Amended 1986

North Carolina Give Name

(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

N.C. Gen. Stat.  
Ann. § 163-  
166.7

North Dakota Provide ID

16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook.

N.D. Cent.  
Code § 16.1-  
05-07

1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.

(From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)

030106

Ohio	Match Sig.	<p>When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark.</p> <p>The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.</p>	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	<p>(Effective at time of last update, 1992 H 182, eff. 4-9-93)</p> <p>Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry.</p> <p>(Last amended in 1990)</p> <p>Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours.</p> <p>(Last amended in 1990)</p>	Okla. Stat. Ann. tit. 26, § 7-114
Oregon	Match Sig.	<p>All elections in Oregon are Vote by Mail.</p> <p>An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity</p> <p>(<a href="http://www.uhavavote.org/votingguide/votebymail.html">http://www.uhavavote.org/votingguide/votebymail.html</a>) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)</p>	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	<p>(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the</p>	25 Pa. Stat. Ann. § 3050

030107

polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.

(In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))

Rhode Island Give Name

(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form:  
BALLOT APPLICATION

R.I. Gen. Laws  
§ 17-19-24

(Poll List)  
Senatorial District \_\_\_\_\_

Representative District \_\_\_\_\_

Voting District \_\_\_\_\_

Election

Date \_\_\_\_\_

I hereby certify that I am a registered and qualified elector in the above voting district of  
City of

and hereby make application for ballots to be voted at this election.

\_\_\_\_\_  
(Signature of Voter)

\_\_\_\_\_  
(Residence Address)

Number Approved \_\_\_\_\_

(Supervisor of Election)

030108

(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time.

(Last amended 2004, Current through January 2005 Session)

South Carolina Photo ID

**§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.**

S.C. Code Ann.  
§ 7-13-710

When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5-125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.

South Dakota Photo ID

Last amended: 1968

When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either:

S.D. Codified  
Laws § 12-18-  
6.1

- (1) A South Dakota driver's license or nondriver identification card;
- (2) A passport or an identification card, including a picture, issued by an agency of the United States government;
- (3) A tribal identification card, including a picture; or
- (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or

technical school, located within the State of South Dakota.

Last amended March 2004

Tennessee	Provide ID	<p>Identification of eligible voters</p> <p>(a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet.</p> <p>(2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists:</p> <p>(A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar;</p> <p>(B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list;</p> <p>(C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and</p> <p>(D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission.</p>	Tenn. Code Ann. § 2-7- 112
Texas	Provide ID	<p>Last amended 2003</p> <p>(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place.</p>	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	<p>(Last amended in 1997)</p> <p>(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges.</p> <p>(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.</p> <p>(3) If the election judge determines that the voter is registered:</p> <p>(a) the election judge in charge of the official register shall:</p> <p>(i) write the ballot number opposite the name of the voter in the official register;</p> <p>and</p>	Utah Code Ann. § 20A-3- 104

- (ii) direct the voter to sign his name in the election column in the official register;
- (b) another judge shall list the ballot number and voter's name in the pollbook; and
- (c) the election judge having charge of the ballots shall:
  - (i) endorse his initials on the stub;
  - (ii) check the name of the voter on the pollbook list with the number of the stub;
  - (iii) hand the voter a ballot; and
  - (iv) allow the voter to enter the voting booth.

(In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)

Vermont Give Name

Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and:

Vt. Stat. Ann. tit. 17, § 2563

(1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting.

(2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting

Virginia Provide ID

(Last amended in 2003)

§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification

Va. Code. Ann.

A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him.

B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

If the voter's name is found on the pollbook, if he presents one of the forms of

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identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth.

Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.

Washington	Sign Name	(Version in effect as of 2004- effective 4/12/2004) 29A.44.201.  A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter.  (In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004)  29A.44.210.  Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.	Wash. Rev. Code § 29A.44.201 & 29A.44.210
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The precinct election officers shall then record the voter's name.

Effective date: July 1, 2004

West Virginia	Match Sig.	(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon. * * *  (c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the	W. Va. Code § 3-1-34 (a)
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030112

election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

Wisconsin	Give Name	(In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003) 6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number.	Wis. Stat. § 6.79
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Wyoming	Give Name	(In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004) (a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22- 15-109, no identification shall be required when:  (i) Voting in person or by mail after having registered in person; or  (ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election.	Wyo. Stat. Ann. § 22-3-118
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(In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)

030113

**APPENDIX B: COURT DECISIONS AND LITERATURE ON VOTER  
IDENTIFICATION AND RELATED ISSUE COURT DECISIONS**

**June 28, 2006**

030114

## **Summary of Relevant Cases:**

### **Challenges Prevailed:**

#### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

#### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

### **Challenges Rejected:**

#### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

#### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination
    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast

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- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

*McKay v. Thompson*, 2000

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

*Kemp v. Tucker*, 1975

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

*Perez v. Rhiddlehoover*, 1966

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

**Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

***American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).**

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

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Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

**Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that provisional ballots would not be counted if the voter applied for an

absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal

protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

**Current Litigation Concerning Voter ID Issues<sup>1</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

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<sup>1</sup> As of January 2, 2006



This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

**Georgia** (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>2</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>3</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

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<sup>2</sup> Litigation documents are available at the Election Law @ Moritz website.  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>3</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

**Indiana** (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*):

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>4</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>4</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

**APPENDIX C: ANALYSIS OF EFFECTS OF  
VOTER ID REQUIREMENTS ON TURNOUT**

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June 28, 2006**

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## Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns whether such requirements dampen turnout among those eligible to vote. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics of voter identification requirements contend that the effect is greater based on specific types of requirements. Critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, such as a driver's license. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. This report draws from two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

### Types of voter identification requirements

Based on research by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (10 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>1</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum

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<sup>1</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I also tested the array of minimum identification requirements to assess whether they posed increasing levels of demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

### **Estimating turnout among citizens in the voting-age population**

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.<sup>2</sup>

### **Analysis of aggregate data**

If one treats maximum voter identification requirements as a continuous variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30$ ,  $p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20$ ,  $p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

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<sup>2</sup> McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.2 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, I opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.<sup>3</sup>

Voter identification requirements alone do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county.

I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus I added a variable to reflect the number of days between each state's registration deadline and the election.<sup>4</sup>

Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the median household income for 2002 in each county.<sup>5</sup>

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<sup>3</sup> Treating maximum voter identification requirements as a continuous variable yielded results in which voter identification requirements were negatively related to aggregate turnout. Those results can be found in Table A-1 in the Appendix to this report.

<sup>4</sup> For states that had Election Day registration or no registration requirement (North Dakota), I assigned a value of zero to this variable.

<sup>5</sup> To bring the income figures into a scale comparable to those of the other variables, I used the natural log of median household income.

I estimated a series of random effects models to account for the likelihood that data from counties were correlated within each state (for further explanation of random effects and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>6</sup> I allowed the median income variable to have both fixed and random effects in each state to take into account variation in the cost of living in each state. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, two of the four requirements had a small and negative effect on turnout in 2004: matching one's signature and providing a non-photo identification. Taking into account the reference variable of stating one's name, the results indicate that turnout was lower in states that required signature matches or a non-photo identification than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Two contextual factors -- whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate-- increased voter turnout. The time between the closing date for registration and the election had a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income had positive effects on turnout. The percentage of African-Americans in the county did not have a significant effect.

The effects of the minimum voter identification requirements were non-existent. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to have a negative effect on turnout, as did the number of days between the closing date for registration and the election.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), showed no significant improvement by including the interactions ( $p > 0.05$ ). I report the coefficients for the models with the interactions in the Appendix in tables A-2 and A-3.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the identification requirements for voting vary, so does turnout. Specifically, in terms of the maximum requirements, the results suggest that requiring a signature match or non-photo identification is negatively related to turnout compared to requiring that a voter state his or her name. But the analysis showed that adding interactions between identification

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<sup>6</sup> The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

requirements and the percentage of the county that was African-American or Hispanic did not improve the fit of the model to the data.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>7</sup> Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

### Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>8</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>9</sup> As in the analysis of aggregate data, I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the

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<sup>7</sup> A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

<sup>8</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

<sup>9</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.



requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.<sup>10</sup>

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less.<sup>11</sup> At the individual level, I controlled for gender, household income, and dummy variables for race/ethnicity, age and education. In terms of race and ethnicity, I created dummy variables to represent whether a voter was Black/non-Hispanic, Hispanic, or Asian (with white/non-Hispanic/other voters as the omitted category for reference purposes). I separated education into five dummy variables: less than high school, high school diploma, some college, college graduate, and graduate training. I omitted the "less than high school" variable from the model for reference purposes. Regarding age, I created four dummy variables to represent 18 to 24 years of age, 29 to 44, 45 to 64, and 65 years and older. I omitted the 18-to-24 category as the reference variable in the model.

Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

## Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 3 here]

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<sup>10</sup> Earlier versions of this paper included an individual-level analysis that included the five maximum voter identification requirements combined into a continuous variable. The results of that analysis, which found that voter identification requirements had a negative relationship with turnout, can be found in table A-4 in the Appendix.

<sup>11</sup> Given that the individual-level analysis focused on registered voters (as opposed to the citizen voting-age population in the aggregate analysis), I did not include the closing date for registration as a predictor of turnout in the individual-level analysis.

The two models in Table 3 use either the maximum or minimum voter identification requirements in each state. The two models generate similar results. In each model, three of the voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. In other words, compared to states that require voters only to state their names, the requirements to sign one's name, provide a non-photo identification, photo identification in the maximum requirements or affidavit in the minimum requires exert a negative influence on turnout.

Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had finished high school. Respondents who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>12</sup> I calculated the probabilities taking into account both maximum and minimum requirements.

[Table 4 here]

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability appear to decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>13</sup> In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum

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<sup>12</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

<sup>13</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter identification requirements. But incorporating dummy variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, I divided the sample into sub-samples and re-ran the probit models.

[Table 5 here]

The effects of voter identification requirements were similar for white voters compared to the entire sample, which was not surprising given that white voters comprised 81 percent of the sample. Voters in states where the maximum requirement involved signing one's name, providing a non-photo identification or photo identification were less likely to vote than those in a state that required voters to give their names. Taking into consideration the minimum requirements, this was true only for voters in states that require a non-photo identification or an affidavit. White voters in photo identification states were 3.7 percent less likely to vote than were white voters in states where respondents gave their names. The difference in probability was 4.4 percent for voters in states where an affidavit was the minimum requirement.

Voter identification requirements also influenced turnout among Black voters, but to a lesser extent relative to white voters.

[Table 6 here]

Of the maximum voter identification requirements, only the non-photo identification requirement reduced turnout compared to turnout in states that required voters to state their names. The predicted probability of voting was 5.7 percent lower for Black respondents in states that required non-photo identification. In terms of age, only African-Americans age 65 and older were more likely to vote than respondents in the 18 to 24 referent group. Respondents in all levels of education were more likely to vote than respondents without a high school diploma. Gender, income, living in a battleground state, being a part of the workforce and having been born in the United States also were positive predictors. Recent mobility tended to lower the probability of voting. None of the minimum identification requirements had a significant effect on voting, while most of the remaining variables had effects similar to those in the maximum requirement model.

Hispanic voters also were less likely to vote in states that required non-photo identification as opposed to stating one's name.

[Table 7 here]

Using the coefficients from Table 7 to calculate predicted probabilities, for both the maximum and minimum requirements, Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. Hispanic voters ages 45 to 64 and 65 and over were more likely to vote than their 18-to-24-year-old counterparts. Education and income also were positive predictors of voting. Interestingly, being

a native-born citizen lowered the probability of voting, while native-born citizenship was a positive predictor for African-American voters and was not a predictor at all for white voters. It may be that naturalized citizens of Hispanic descent are more conscious of the value of voting rights than other groups.

Varying voter identification requirements influenced Asian-American voters as well. As with Hispanic and Black voters, Asian-American voters were less likely to turn out in states with non-photo identification requirements than in states where voters gave their names.

[Table 8 here]

Using the probit coefficients to calculate predicted probabilities, Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement. Asian-American voters also were 2.2 percent less likely to vote when signatures were the maximum requirement compared to stating one's name.

In terms of other predictors, there were no significant differences in terms of age or income. In contrast to Hispanic voters, where one was a naturalized or natural-born citizen did not affect the probability of voting. Those with high school or college diplomas or graduate training were more likely to turn out than those with less than a high school diploma. Women and married voters also were more likely to turn out than men and voters who were not married.

### **Discussion and conclusion**

The results presented here provide evidence that as voter identification requirements vary, voter turnout does as well. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

In the aggregate data, requirements that voters match signatures on file or provide a non-photo identification had negative effects on turnout compared to requiring that voters state their names. Interactions with specific groups – African-Americans and Hispanics – did not improve the fit of the aggregate data to the models. But differences emerged among specific groups in the individual-level data. For the overall sample, the signature, non-photo identification and photo identification requirements all had negative effects compared to the requirement that voters simply state their names. These effects translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This begs the question as to why photo identification requirements did not have a greater influence in 2004. It may have been due to the fact that

photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?<sup>14</sup> Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the “on the ground” experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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<sup>14</sup> The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using the November 2004 Current Population Survey data and voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Of all of the voter identification requirements, only requiring signatures or matching signatures had a significant effect on whether a respondent said he or she was registered to vote in 2004. In each instance the effect was negative.

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**Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements**

<b>Maximum Requirement</b>		<b>Minimum Requirement</b>	
<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>	<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>
<b>State Name</b>	64.2 %	<b>State Name</b>	63.0 %
<b>Sign Name</b>	61.1 %	<b>Sign Name</b>	60.8 %

**Match Signature** 60.9 %  
**Provide Non-Photo** 59.3 %  
**ID**  
**Provide Photo ID** 58.1 %  
*Average Turnout for*  
*All States*

**Match Signature** 61.7 %  
**Provide Non-Photo** 59.0 %  
**ID**  
**Swear Affidavit** 60.1 %  
60.9 %



**Table 2. Predictors of 2004 turnout at the county level taking into account maximum and minimum voter identification requirements**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	-1.34**	0.14	-1.36**	0.4
Sign Name	-0.01	0.012	0.002	0.02
Match Signature	-0.03*	0.014	-0.001	0.02
Non-photo ID	-0.04**	0.013	-0.01	0.02
Photo Identification	-0.02	0.019	----	----
Affidavit	----	----	-0.01	0.02
Battleground State	0.04**	0.01	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01	0.04*	0.02
Registration Closing Date	-0.002**	0.0005	-0.003**	0.001
% African-American	0.02	0.01	0.02	0.01
% Hispanic	-0.05**	0.01	-0.05**	0.01
% Age 65 or older	0.82**	0.03	0.82**	0.03
Median Household Income	0.18**	0.01	0.18**	0.01
-2 Log Likelihood	-8953.8		-8946.9	

Coefficients are restricted maximum likelihood estimates. N = 3,111. \* p < .05 \*\* p < .01 (one-tailed tests)

Table 3. Probit model of voter turnout.

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized	Standard	Unstandardized	Standard
	Estimate	Error	Estimate	Error
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	---	---
Affidavit	---	---	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian-American	-0.37**	0.07	-0.38**	0.07
Age 25-44	0.004	0.02	0.003	0.02
Age 45-64	0.26**	0.03	0.26**	0.03
Age 65+	0.43**	0.03	0.43**	0.03
High School	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate School	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo-R-Squared	0.09		0.10	

Notes: N = 54,973 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

**Table 4. Predicted probability of voter turnout – full model**

	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.917	0.915
<b>Sign name</b>	0.899	0.902
<b>Match signature</b>	(N.S.)	(N.S.)
<b>Non-photo ID</b>	0.890	0.890
<b>Photo ID</b>	0.888	----
<b>Affidavit</b>	----	0.875
<b>Total difference from “state name” to “photo identification” or “affidavit”</b>	0.029	0.040
<b>N</b>	54,973	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one’s name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 5. Probit model of turnout for White voters.

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized	Standard	Unstandardized	Standard
	Estimate	Error	Estimate	Error
Sign name	-0.10*	0.05	-0.07	0.04
Match signature	-0.04	0.05	-0.01	0.06
Non-photo ID	-0.14**	0.06	-0.14**	0.06
Photo ID	-0.22**	0.08	---	---
Affidavit	---	---	-0.26**	0.05
Age 25-44	-0.01	0.03	-0.01	0.03
Age 45-64	0.25**	0.03	0.25**	0.03
Age 65+	0.44**	0.04	0.44**	0.04
High School	0.36**	0.03	0.36**	0.03
Some college	0.64**	0.03	0.64**	0.03
College	0.95**	0.04	0.96**	0.04
Graduate School	1.05**	0.05	1.05**	0.05
Household income	0.03**	0.004	0.03**	0.003
Married	0.27**	0.02	0.27**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.16**	0.04	0.16**	0.04
Competitive race	0.07	0.07	0.07	0.06
Employed	0.08	0.05	0.08	0.05
Member of workforce	0.0003	0.05	0.003	0.05
Native-born citizen	0.08	0.08	0.08	0.08
Moved within past 6 months	-0.28**	0.03	-0.28**	0.03
Constant	-0.23*	0.11	-0.24**	0.10
Pseudo-R-Squared	.10		.10	

Notes: N = 44,760 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 6. Probit model of turnout for African-American voters.

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized	Standard	Unstandardized	Standard
	Estimate	Error	Estimate	Error
Sign name	-0.13	0.09	-0.08	0.13
Match signature	-0.05	0.10	-0.17	0.13
Non-photo ID	-0.24**	0.07	-0.14	0.12
Photo ID	-0.10	0.12	----	----
Affidavit	----	----	-0.05	0.19
Age 25-44	-0.004	0.09	-0.004	0.09
Age 45-64	0.12	0.09	0.13	0.09
Age65+	0.30**	0.12	0.31**	0.12
High School	0.24**	0.06	0.25**	0.06
Some college	0.40**	0.07	0.40**	0.07
College	0.69**	0.08	0.68**	0.08
Graduate School	0.99**	0.19	0.98**	0.19
Household income	0.04**	0.01	0.05**	0.008
Married	0.11	0.07	0.11	0.07
Female	0.14**	0.04	0.14**	0.04
Battleground state	0.13*	0.07	0.21**	0.08
Competitive race	-0.10	0.07	-0.16	0.10
Employed	-0.09	0.11	-0.09	0.10
Member of workforce	-0.32**	0.12	-0.31**	0.11
Native-born citizen	0.31**	0.11	0.28**	0.12
Moved within past 6 months	-0.32**	0.06	-0.32**	0.06
Constant	0.16	0.18	0.12	0.17
Pseudo-R-Squared	0.09		0.09	

Notes: N = 5,013 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

Table 7. Probit model of turnout for Hispanic voters.

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized	Standard	Unstandardized	Standard
	Estimate	Error	Estimate	Error
Sign name	-0.20	0.20	-0.19	0.11
Match signature	-0.12	0.20	-0.18	0.12
Non-photo ID	-0.40*	0.20	-0.38**	0.13
Photo ID	-0.13	0.23	---	---
Affidavit	---	---	-0.25	0.16
Age 25-44	0.11	0.09	0.11	0.09
Age 45-64	0.35**	0.10	0.36**	0.10
Age65+	0.38**	0.11	0.40**	0.11
High School	0.18**	0.08	0.19*	0.08
Some college	0.46**	0.07	0.46**	0.07
College	0.63**	0.11	0.64**	0.11
Graduate School	0.72**	0.13	0.73**	0.13
Household income	0.03**	0.01	0.03**	0.01
Married	0.05	0.06	0.05	0.06
Female	0.09*	0.04	0.09*	0.04
Battleground state	0.31**	0.06	0.36**	0.07
Competitive race	-0.06	0.13	-0.05	0.13
Employed	0.13	0.12	0.14	0.12
Member of workforce	0.07	0.13	0.08	0.13
Native-born citizen	-0.18**	0.07	-0.20**	0.07
Moved within past 6 months	-0.38**	0.08	-0.39**	0.08
Constant	0.22	0.27	0.21	0.20
Pseudo-R-Squared	0.08		0.08	

Notes: N = 2,860 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

**Table 8. Probit model of turnout for Asian-American voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized	Standard	Unstandardized	Standard
	Estimate	Error	Estimate	Error
Sign name	-0.37**	0.20	-0.26	0.17
Match signature	-0.17	0.22	-0.01	0.21
Non-photo ID	-0.40**	0.21	-0.28*	0.16
Photo ID	-0.30	0.21	---	---
Affidavit	---	---	0.12	0.30
Age 25-44	-0.11	0.23	-0.10	0.23
Age 45-64	0.06	0.26	0.08	0.26
Age 65+	0.14	0.36	0.17	0.34
High School	0.54**	0.21	0.55**	0.21
Some college	0.36	0.31	0.36	0.31
College	0.67**	0.22	0.66**	0.23
Graduate School	0.57*	0.25	0.55*	0.26
Household income	0.01	0.01	0.01	0.01
Married	0.34**	0.13	0.34**	0.13
Female	0.16*	0.09	0.16*	0.08
Battleground state	0.29*	0.14	0.23	0.16
Competitive race	0.33*	0.19	0.27	0.22
Employed	-0.24	0.33	-0.25	0.33
Member of workforce	-0.54	0.35	-0.55	0.35
Native-born citizen	0.14	0.12	0.16	0.11
Moved within past 6 months	-0.38*	0.17	-0.39*	0.17
Constant	0.36	0.52	0.29	0.51
Pseudo-R-Squared	0.08		0.08	

Notes: N = 912 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

## Appendix

**Table A-1. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements treated as a continuous variable.**

<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Intercept</b>	-1.33**	0.14
<b>Voter Identification Requirements</b>	-0.01**	0.004
<b>Battleground State</b>	0.04**	0.01
<b>Competitive Senate/Governor's Race</b>	0.04**	0.01
<b>% African-American</b>	0.02	0.01
<b>% Hispanic</b>	-0.05**	0.01
<b>% Age 65 or older</b>	0.82**	0.03
<b>Median Household Income</b>	0.18**	0.01
<b>Registration Closing Date</b>	-0.002**	0.001
<b>-2 Log Likelihood</b>	-8970.1	

Coefficients are restricted maximum likelihood estimates. N = 3,111.

\* p < .05 \*\* p < .01 (one-tailed tests).



**Table A-2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements and interactions.**

<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
Intercept	-1.39**	0.14
Sign Name	-0.02	0.013
Match Signature	-0.03*	0.02
Non-photo ID	-0.05**	0.01
Photo Identification	-0.05**	0.02
Battleground State	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01
% African-American	-0.02	0.03
% Hispanic	-0.22**	0.10
% Age 65 or older	0.8**	0.03
Median Household Income	0.18**	0.01
Registration Closing Date	-0.002**	0.001
Signature*African-American	0.02	0.04
Match Signature*African-American	0.16**	0.07
Non-photo ID*African-American	0.03	0.03
Photo ID*African-American	0.20**	0.05
Signature*Hispanic	0.14	0.09
Match Signature*Hispanic	-0.01	0.11
Non-photo ID*Hispanic	0.20**	0.09
Photo ID*Hispanic	0.03	0.11
-2 Log Likelihood	-8966.7	

Coefficients are restricted maximum likelihood estimates. N = 3,111.

\* p < .05 \*\* p < .01 (one-tailed tests).

**Table A-3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements and interactions.**

<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Intercept</b>	-1.39**	0.14
<b>Sign Name</b>	0.0003	0.016
<b>Match Signature</b>	-0.001	0.02
<b>Non-photo ID</b>	-0.02	0.02
<b>Affidavit</b>	-0.02	0.02
<b>Battleground State</b>	0.04**	0.01
<b>Competitive Senate/Governor's Race</b>	0.04**	0.02
<b>% African-American</b>	-0.02	0.02
<b>% Hispanic</b>	-0.19**	0.08
<b>% Age 65 or older</b>	0.82**	0.03
<b>Median Household Income</b>	0.18**	0.01
<b>Registration Closing Date</b>	-0.003**	0.001
<b>Signature*African-American</b>	-0.007	0.03
<b>Match Signature*African-American</b>	0.15**	0.05
<b>Non-photo ID*African-American</b>	0.04	0.03
<b>Affidavit*African-American</b>	0.18**	0.05
<b>Signature*Hispanic</b>	0.12	0.08
<b>Match Signature*Hispanic</b>	-0.03	0.11
<b>Non-photo ID*Hispanic</b>	0.17*	0.08
<b>Affidavit*Hispanic</b>	-0.04	0.10
<b>-2 Log Likelihood</b>	-8960.8	

Coefficients are restricted maximum likelihood estimates. N = 3,111.

\* p < .05 \*\* p < .01 (one-tailed tests).

**Table A-4. Probit model of voter turnout treating maximum voter identification requirements as a continuous variable.**

<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Voter Identification Requirements</b>	-0.04**	0.02
<b>Hispanic</b>	-0.09	0.05
<b>African-American</b>	0.24**	0.04
<b>Asian-American</b>	-0.38**	0.07
<b>Age 25-44</b>	0.005	0.02
<b>Age 45-64</b>	0.26**	0.03
<b>Age65+</b>	0.43**	0.03
<b>High School</b>	0.31**	0.02
<b>Some college</b>	0.57**	0.03
<b>College</b>	0.87**	0.04
<b>Graduate School</b>	0.98**	0.05
<b>Household income</b>	0.03**	0.003
<b>Married</b>	0.23**	0.02
<b>Female</b>	0.10**	0.01
<b>Battleground state</b>	0.19**	0.04
<b>Competitive race</b>	0.04	0.05
<b>Employed</b>	0.05	0.05
<b>Member of workforce</b>	-0.05	0.05
<b>Native-born citizen</b>	0.02	0.04
<b>Moved within past 6 months</b>	-0.29**	0.03
<b>Constant</b>	-0.08	0.10
<b>Pseudo-R-Squared</b>		0.09

Notes: N = 54,973 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004

**APPENDIX D: ANNOTATED BIBLIOGRAPHY  
ON VOTER IDENTIFICATION ISSUES**

**June 28, 2006**

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## Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
  - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
  - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
  - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
  - Discusses changes in AL to their election law in 2003, including adding voter ID
  - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
  - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
  - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14<sup>th</sup> amendment)
  - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
  - Discusses voter registration as a way to combat fraud & several different ways to do it

### Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
  - Lot of analysis on HAVA and voter ID
  - Little bit of historical
  - Arguments for and against certain types of voter ID laws

- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
  - History of voting & requirements & laws throughout time
  - Future: I-voting & e-registration – improvements in voter ID which would result

#### **Marginally relevant/limited discussion of Voter ID issues**

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
  - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
  - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
  - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
  - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
  - Anti fraud election reform in Missouri
- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
  - Vote by mail and discusses fraud issues involved
- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
  - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
  - History of voting and requirements
  - Theory

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**APPENDIX E: STATE STATUTES AND REGULATIONS  
AFFECTING VOTER IDENTIFICATION**

**Sara A. Sampson  
Reference Librarian  
Moritz College of Law  
June 28, 2006**

## Alabama

### **Summary:**

In Alabama, all voters must show identification prior to voting at the polls. Ala. Code § 17-11A-1 (2005). The identification forms permitted are similar to the forms permitted under HAVA. *Id.* Alabama also permits a voter who lacks identification to be identified by two poll workers who can attest to the voter's identity. *Id.* If the voter lacks identification and no two poll workers can vouch for him, the voter may sign an affidavit and vote a provisional ballot. *Id.*

Absentee voters who registered by mail and are voting for the first time in an election for federal office must also provide identification. Ala. Code § 17-10A-1 (2005). They may provide the identification with their ballot or their registration or at any time prior to the election. *Id.* If an absentee voter required to provide identification does not provide it, his ballot will be considered a provisional ballot. Ala. Code § 17-10A-2 (2005). The voter must provide identification by the Monday following the election in order for his ballot to count. *Id.*

There are two bills pending in the Alabama legislature. One would eliminate social security cards as a valid form of identification. HB 218, 2005 Reg. Sess. (Ala. 2005). The other would require proof of citizenship with registration. HB 743, 2005 Reg. Sess. (Ala. 2005).

- **Statutes:** Ala. Code § 17-11A-1 (2005).
  - **Passed:**
    - § 17-11A-1 – 2003
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - HB 218, 2005 Reg. Sess. (Ala. 2005): eliminates social security card as valid identification [pending].
  - HB 743, 2005 Reg. Sess. (Ala. 2005): requires proof of citizenship with voter registration [4/6/05 in committee].
- **Case law (from annotations):** none
- **Administrative regulations:** none for voter identification.
- **What the law requires:**
  - **Is ID required?**
    - **At polls – all voters:**
      - All voters must show identification. Ala. Code § 17-11A-1 (2005).
    - **Absentee voters:**
      - Only those who registered by mail and have not voted in a federal election (HAVA requirement). Ala. Code § 17-10A-1 (2005).
  - **First time voters or all?**
    - All voters at polls. Ala. Code § 17-11A-1 (b) (2005).
  - **When?**

- At the polls for all in-person voters. Ala. Code § 17-11A-1 (2005).
- At either registration or with mailed ballot or prior to election day for voters voting by mail. Ala. Code § 17-10A-1 (2005).
- **What types of ID?**
  - Valid photo identification: government issued, issued by employer, student identifications from AL schools
  - Or
  - A copy of a current utility bill, bank statement, government check, or paycheck
  - Or
  - Other government document: identification card issued by government agency (AL state or federal), passport, AL hunting license, AL gun permit, pilot's license, military identification card, birth certificate, social security card, naturalization certificate, copy of court record of name change or adoption, or Medicare or Medicaid card
  - Or
  - Identified by two poll worker who will attest to the voter's identity.
  - Ala. Code § 17-11A-1 (2005).
- **State or federal elections?**
  - All elections. Ala. Code § 17-11A-1 (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Ala. Code § 17-11A-1 (e) (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit. Ala. Code § 17-10A-2 (b)(2) (2005).
  - Absentee voters whose ballots are considered provisional must provide identification by the Monday following the election or their ballots will not be counted. Ala. Code § 17-10A-2 (2005).
- **Challenge available at polls?**
  - No. Statute repealed in 2003. Ala. Code § 17-12-1 (2005).



## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 20, 2005  
**RE:** States for ID requirements chart: Alaska

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### Alaska

#### Summary:

At the polls, all voters must provide proof of identification. Alaska Stat. § 15.15.225 (2005). Absentee voters are required to provide identification as well. Alaska Stat. § 15.20.081 (2005). The types of identification permitted are: an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, hunting or fishing license, an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document. Alaska Stat. § 15.15.225 (2005). Alternatively, a voter who is known to an election official may have the requirement waived (except if he registered by mail and is voting for the first time). *Id.* Without identification, a voter may sign a statement and vote a questioned ballot. *Id.*

There are no pending or recently passed bills concerning voter identification.

- **Statutes:** Alaska Stat. § 15.15.225 (2005).
  - **Passed:**
    - §15.15.225 – 1980
- **Session law/recent legislation passed:** none
- **Pending legislation:** none
- **Case law (from annotations):** none
- **Administrative regulations:** none concerning voter identification.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - None
    - **Absentee voters:**
      - Must provide proof of identification. Alaska Stat. § 15.20.081 (2005).
    - **At polls:**
      - All voters required to show identification at polls. Alaska Stat. § 15.15.225 (2005).
  - **First time voters or all?**
    - All voters. Alaska Stat. § 15.15.225 (2005).
  - **When?**
    - At polls. Alaska Stat. § 15.15.225 (2005).

- **What types of ID?**
  - An official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license;
- OR
- an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; must show the name and current address of the voter;
- OR
- have the requirement waived because the voter is known to an election official (first time voters who registered by mail or fax may not have the requirement waived)
- Alaska Stat. § 15.15.225 (2005).
- **State or federal elections?**
  - All elections. Alaska Stat. § 15.15.225 (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Questioned ballot. Alaska Stat. § 15.15.225 (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Sign a statement. Alaska Stat. § 15.15.215 (2005); Alaska Stat. § 15.15.210 (2005).
- **Challenge available at polls?**
  - Yes. Alaska Stat. § 15.15.210 (2005).
- **Miscellaneous:**
  - Has early voting – early voters may vote early at specified locations for fifteen days prior to the election & must show identification (same forms and procedure as at the polls on election day). Alaska Stat. § 15.20.064 (2005).

## MEMORANDUM

**TO:** Sara Sampson

**FROM:** Jamie LaPlante

**DATE:** July 21, 2005 [Note that the law has changed- the chart reflects law current to 9/1/05]

**RE:** States for ID requirements chart: Arizona

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### Arizona

#### Summary:

Recently, in the 2004 election, Arizona passed Prop. 200, which included a vague requirement of identification at the polls. All voters at the polls must provide either one form of identification with their name, address, and photo or two forms of identification with their name and address. Ariz. Rev. Stat. § 16-579 (2004). The requirement is not more specific regarding the types of identification accepted and the consequences of having no identification. The legislature and the governor have yet to agree on the specifics for this requirement.

There were four bills which were introduced in this session concerning voter identification. HB 2658 and 2044 would define the identification types broadly, similar to HAVA. HB 2658, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005); HB 2044, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005). SB 1186 and 1118 would also define identification broadly but would also require proof of citizenship at registration and showing identification prior to voting a provisional ballot. SB 1186, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005); SB 1118, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005). Both SB 1186 and 1118 passed both houses but were vetoed by the governor because of the identification requirement for provisional voting.

- **Statutes:** Ariz. Rev. Stat. § 16-579 (2004). [Part of Prop. 200 from 2004 election]
  - **Passed:**
    - § 16-579 – 2004
    - No details regarding particulars of these requirements have been decided between the legislature and governor; last proposal by legislature was vetoed by the governor.
- **Session law/recent legislation passed:** Prop. 200 in November 2004 (see above).
- **Pending legislation:**
  - HB 2658, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005): defines identification as a document delivered through postal system, bill, bank statement, paycheck, government issued document, employee identification document, tribal document, military identification card, or passport; provides for provisional voting for those lacking identification. [2/15/05 second reading in House]
  - HB 2044, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005): provides that any identification with the voter's address and matching the information in the signature record is sufficient. [third reading in House 3/3/05]
  - SB 1186, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005): requires proof of citizenship at registration; requires identification in order to vote a

provisional ballot; does not specify identification types further than under Prop. 200 [vetoed on 5/20/05].

- SB 1118, 47<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2005): similar bill [vetoed 4/1/05].

- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - None.
    - **Early voting:**
      - Must provide date and state of birth with request for early ballot. Ariz. Rev. Stat. § 16-542 (A) (2004).
        - If the voter is voting for the first time, he shall submit a copy of identification (HAVA compliance) [but keep in mind this statute was passed prior to Prop. 200, and when the specifics of the identification requirement are worked out, this requirement may be modified as well]. Ariz. Rev. Stat. § 16-542 (C) (2004).
    - **At polls:**
      - All voters must provide either one form of identification with their name, address, and photo or two forms of identification with their name and address [Prop. 200]. Ariz. Rev. Stat. § 16-579 (2004).
  - **First time voters or all?**
    - All voters. Ariz. Rev. Stat. § 16-579 (2004).
  - **When?**
    - At the polls. Ariz. Rev. Stat. § 16-579 (2004).
  - **What types of ID?**
    - None specified yet.
  - **State or federal elections?**
    - Both. Ariz. Rev. Stat. § 16-579 (2004).
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Not specified yet.
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - Not specified yet.
  - **Challenge available at polls?**
    - Yes. Ariz. Rev. Stat. § 16-591 (2004).
  - **Miscellaneous:**
    - Has early voting in which any voter may take part. Ariz. Rev. Stat. § 16-542 (2004).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 21, 2005  
**RE:** States for ID requirements chart: Arkansas

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### Arkansas

#### Summary:

Arkansas voters are required to identify themselves and state their address or date of birth to election officials at the polls. Ark. Code Ann. § 7-5-305 (2005). They also must provide identification at the polls. *Id.* The forms of identification are the same forms as permitted under HAVA. *Id.* This requirement applies to state and federal elections. *Id.* Without identification, a first time voter who registered by mail must sign an affidavit and vote provisionally. *Id.* For all other voters without identification, they may vote a regular ballot, but precinct officials will note in the precinct list that they did not provide identification. *Id.* The prosecutor may wish to use the list to prosecute potential election fraud.

Arkansas also has early voting, but the procedure for identification is the same as election day voting.

As required by HAVA, absentee voters who registered by mail and are voting for the first time must provide identification with their ballot if they did not do so with their registration. Ark. Code Ann. § 7-5-201 (2005).

The legislature recently passed a bill which removes HAVA's vague language regarding provisional voters in the wrong precinct from its code. 2005 Ark. Acts 238. Arkansas makes it clear that a voter must be in the correct precinct in order for his vote to count. *Id.* There are also two bills pending this session which would require proof of citizenship at registration. SB 1111, 85<sup>th</sup> Gen. Assem. 2005 Reg. Sess. (Ark. 2005); SB 206, 85<sup>th</sup> Gen. Assem. 2005 Reg. Sess. (Ark. 2005).

- **Statutes:** Ark. Code Ann. § 7-5-305 (2005).
  - **Passed:**
    - § 7-5-305 – 1999; 2003 added provision for provisional vote for first time voters without identification
- **Session law/recent legislation passed:**
  - 2005 Ark. Acts 238: provides that voters in the incorrect precinct should be directed to the correct precinct; voters only permitted to vote a provisional ballot if they sign an affidavit that they are eligible in that precinct (changed “jurisdiction” to “precinct” – removed vague terms used in HAVA). [SB 256 – approved 2/17/05]
- **Pending legislation:**
  - SB 1111, 85<sup>th</sup> Gen. Assem. 2005 Reg. Sess. (Ark. 2005): requires evidence of citizenship for registration, which includes a driver's license if proof of citizenship was required, birth certificate, passport, naturalization

documents, tribal identification card, and other proof of citizenship under Immigration Act. [3/7/05 introduced and referred to committee]

- SB 206, 85<sup>th</sup> Gen. Assem., 2005 Reg. Sess. (Ark. 2005): requires evidence of citizenship for registration, which includes a driver's license if proof of citizenship was required, birth certificate, passport, naturalization documents, tribal identification card, and other proof of citizenship under Immigration Act. [1/26/05 introduced; 4/13/05 referred to a second committee]
- **Case law (from annotations):**
  - none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Provide driver's license number or last four digits of social security number or state that he does not have either one. Secretary of State, Charlie Daniels, Voting 101: A Pocket Guide to Voting in the Natural State, 3, [http://www.sosweb.state.ar.us/elections/elections\\_pdfs/education/voting101layout-all.pdf](http://www.sosweb.state.ar.us/elections/elections_pdfs/education/voting101layout-all.pdf).
      - If a first time voter who registers by mail wishes to avoid the possibility of voting a provisional ballot, he should provide a copy of identification with his registration. Secretary of State, Charlie Daniels, Voting 101: A Pocket Guide to Voting in the Natural State, 3, [http://www.sosweb.state.ar.us/elections/elections\\_pdfs/education/voting101layout-all.pdf](http://www.sosweb.state.ar.us/elections/elections_pdfs/education/voting101layout-all.pdf). Then, if he has no identification at the polls, he may vote a regular ballot. *Id.*
    - **At polls:**
      - All voters must identify themselves and state their address or date of birth. Ark. Code Ann. § 7-5-305 (2005).
      - All voters must provide identification at the polls. Ark. Code Ann. § 7-5-305 (a)(8)(A) (2005).
    - **Early voting at polls:**
      - Same as election day at polls procedure. Secretary of State, Charlie Daniels, Voting 101: A Pocket Guide to Voting in the Natural State, 15, [http://www.sosweb.state.ar.us/elections/elections\\_pdfs/education/voting101layout-all.pdf](http://www.sosweb.state.ar.us/elections/elections_pdfs/education/voting101layout-all.pdf).
    - **Absentee voters:**
      - If they registered by mail and are voting for the first time, they must provide a copy of identification with their ballot. Ark. Code Ann. § 7-5-201 (2005).
  - **First time voters or all?**
    - All, although the consequences of not having identification differ between first time voters who registered by mail and other voters. Ark. Code Ann. § 7-5-305 (a)(8)(B) (2005).

- **When?**
  - At the polls. Ark. Code Ann. § 7-5-305 (2005).
- **What types of ID?**
  - Current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Ark. Code Ann. § 7-5-305 (a)(8)(A) (2005).
- **State or federal elections?**
  - All elections. Ark. Code Ann. § 7-5-305 (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - **First time voters who registered by mail without providing identification:** must vote a provisional ballot. Ark. Code Ann. § 7-5-305 (a)(8)(B)(i) (2005).
  - **All other voters:** vote a regular ballot and election official notes on the precinct list that the voter did not provide identification. Ark. Code Ann. § 7-5-305 (a)(8)(B)(ii) (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - None except that the prosecutor reviews the list of voters who voted without identification and may prosecute election fraud. Ark. Code Ann. § 7-5-305 (a)(8)(B)(iv) (2005).
  - For first time voters voting by provisional ballot – affidavit. Ark. Code Ann. § 7-5-306 (2005).
- **Challenge available at polls?**
  - Yes but only by appointed poll watchers. Ark. Code Ann. § 7-5-312 (a)(1) (2005)

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: California

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### California

#### Summary:

California law does not require identification at registration or at the polls. The only identification procedures in place under state law are signature verification and requiring the voter recite his name and address prior to voting. Cal. Elec. Code § 14216 (2005). California does have a place on the registration form for driver's license or state identification number, and this information is checked against motor vehicle records. However, California does not require that voters provide this information as a prerequisite to registration. Cal. Elec. Code § 2150 (2005). The only identification procedures in place are those under HAVA, and the HAVA identification requirement for first-time registrants only applies in Federal elections. Cal. Code Regs. tit. 2, § 20107 (2005). California allows all types of identification under HAVA and liberally construes the identification requirement. *Id.*

There is a bill pending in the Senate, which would require all voters to show either one form of identification with name, address, and photograph or two forms of identification with name and address. S.B. 226, 2005-06 1<sup>st</sup> Extraordinary Sess. (Cal. 2005).

- **Statutes:** Cal. Elec. Code § 2188 (2005). & Cal. Elec. Code § 2150 (2005).
  - **Passed:**
    - §2188 – 1994 – effective 1/1/95
    - §2150 – 1995 – effective 1/1/96
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - SB 226 – would require all voters to show identification at polls (1 form w/ name, address & photograph or 2 forms w/ name & address) [2/15/05 – Introduced; 2/15/05 - To Elections, Reapportionment, and Constitutional Amendment Committee; 3/17/05 - Set hearing for April 6; 4/6/05 - Hearing, didn't pass Committee; 4/27/05 - Reconsideration granted]
    - S.B. 226, 2005-06 Sess. (Cal. 2005).
  - SB 1016 [passed Senate] – S.B. 1016, 2005-06 Sess. (Cal. 2005).
    - §2150 – does not add any voter identification provisions but would make minor changes to make clear that failure to provide social security number or driver's license number will not result in a failure to register
    - §2188 – amends an irrelevant portion of the section
- **Case law (from annotations):**
  - *People v. Gordon*, 5 Cal. 235 (1855): cannot require a challenged voter to produce proof of citizenship
  - *Richardson v. Ramirez*, 418 U.S. 24 (1974): felon disenfranchisement does not violate equal protection clause of Fourteenth Amendment

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- *Russell v. McDowell*, 23 P. 183 (Cal. 1890): concerning establishing prima facie case for fraudulent voting
  - **Administrative regulations:** Cal. Code Regs. tit. 2, § 20107 (2005).
  - **What the law requires:**
    - **Is ID required?**
      - **For registration:**
        - No, statute states that voters should put driver's license number or other identification on registration form but specifically states that it is not required for registration. Cal. Elec. Code § 2188 (2005); Cal. Elec. Code § 2150 (2005).
      - **At polls:**
        - Not beyond HAVA, announce name and address only. Cal. Elec. Code § 14216 (2005).
    - **First time voters or all?**
      - Nothing beyond HAVA, so just first time voters in Federal elections.
    - **When?**
      - HAVA – either at registration or when voter votes for first time
    - **What types of ID?**
      - (1) a current and valid photo identification: (A) a driver's license or identification card of any state; (B) a passport; (C) an employee identification card; (D) an identification card provided by a commercial establishment; (E) a credit or debit card; (F) a military identification card; (G) a student identification card; (H) a health club identification card; (I) an insurance plan identification card;
- OR
- (2) any of the following documents, provided that the document includes the name and address of the individual presenting it, and is dated since the date of the last general election, unless the document is intended to be of a permanent nature such as a pardon or discharge, including: (A) a utility bill; (B) a bank statement; (C) a government check; (D) a government paycheck; (E) a document issued by a governmental agency; (F) a sample ballot issued by a governmental agency; (G) a voter notification card issued by a governmental agency; (H) a public housing identification card issued by a governmental agency; (I) a lease or rental statement or agreement issued by a governmental agency; (J) a student identification card issued by a governmental agency; (K) a tuition statement or bill issued by a governmental agency; (L) an insurance plan card issued by a governmental agency; (M) discharge certificates, pardons, or other official documents issued to the voter by a governmental agency in connection with the resolution of a criminal case, indictment, sentence, or other matter; (N) public transportation authority senior citizen discount cards issued by a governmental agency; (O) identification documents issued by governmental disability agencies; (P) identification documents issued by government homeless shelters and other

government temporary or transitional facilities; (Q) a drug prescription issued by a government doctor or other governmental health care provider; (R) property tax statement issued by a governmental agency; (S) vehicle registration or certificate of ownership issued by a governmental agency. Cal. Code Regs. tit. 2, § 20107 (2005).

- **State or federal elections?**
  - Cal. Code Regs. tit. 2, § 20107 (2005) states that the identification requirement applies only to voters required to provide identification under HAVA, thus, only Federal elections.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Cal. Code Regs. tit. 2, § 20107 (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - None, just vote provisionally subject to the normal restrictions and rules on provisional ballots. Cal. Code Regs. tit. 2, § 20107 (2005).
- **Challenge available at polls?**
  - Yes, challenge may be on several grounds: (1) the voter is not the person whose name appears on the index; (2) the voter is not a resident of the precinct; (3) the voter is not a citizen of the United States; (4) the voter has voted that day; (5) the voter is presently on parole for the conviction of a felony. Cal. Elec. Code § 14240 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Donnie Scheetz  
**DATE:** August 11, 2005  
**RE:** States for ID requirements chart: Colorado

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### Colorado

#### Summary:

Everyone must present some form of ID at the polls. A Social Security Number will not suffice. If one is registering to vote by mail or voting absentee, a form of ID must be included. To register at least the last four digits of the Social Security number will work. If no ID can be presented then the elector will vote absentee. The ID requirement is the same whether voting early or not.

- **Statutes:** C.R.S. 1-2-501(2)(B); C.R.S. 1-1-104(19.5); C.R.S. 1-2-204(2)(f.5); C.R.S. 1-7-201
  - **Passed:**
    - Articles 1 to 12 of this title were originally enacted as articles 1, 3, 4, 9 to 19, and 24 of chapter 49 in C.R.S. 1963. The substantive provisions of these articles were recodified in 1992, effective January 1, 1993. There were subsequent amendments in 2004.
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - None
- **Case law (from annotations):**
- Provisions not mandatory. To treat all of the provisions of this statute as mandatory so as to deprive those who attempt to register would provide an unequal application of the statute and an inconsistency not warranted by any express language in the enactment. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Obtaining social security numbers from vast majority of voters is only directory. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

**Administrative regulations:** none

- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - If you are a first time voter who registers to vote by mail, you must submit a copy of one of the following forms of ID: valid driver's license, ID issued by the Department of Revenue, passport, employee identification with a photo issued by a governmental entity, pilot's license, military ID, copy of current utility bill, bank statement, government check or other government document that shows the name and address of the elector, Medicare or Medicaid card, copy of birth certificate,

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documentation of naturalization. Instead of any of those the elector may provide one of the following numbers: Driver's License number, Colorado Dept. of Revenue Identification number, or at least the last four digits of Social Security number.

[http://www.sos.state.co.us/pubs/elections/id\\_requirements.pdf](http://www.sos.state.co.us/pubs/elections/id_requirements.pdf)

- If you are a first time Voter who registers to vote in person, you must provide the number from one of the following forms of identification: Driver's License number, Colorado Department of Revenue Identification number, or at least the last four digits of the voter's Social Security number.  
[http://www.sos.state.co.us/pubs/elections/id\\_requirements.pdf](http://www.sos.state.co.us/pubs/elections/id_requirements.pdf)
- If voting absentee, an elector must include a copy of one of the forms of ID listed above. If it is not included then the ballot is treated as a provisional ballot. *C.R.S. 1-8-113*
  - **At polls:**
    - If you vote in person (including early voting, polling place voting), you must provide a copy of any of the above forms identification. However, a Social Security Number (or last four digits) is NOT enough to vote in person.  
[http://www.sos.state.co.us/pubs/elections/id\\_requirements.pdf](http://www.sos.state.co.us/pubs/elections/id_requirements.pdf)
- **First time voters or all?**
  - ID must be provided by all voters who vote in person.
- **When?**
  - At the polls
- **What types of ID?**
  - Listed above
- **State or federal elections?**
  - All types of elections
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - provisional ballot
- C.R.S. 1-7-103  
**Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
- **Challenge available at polls?**
  - Yes

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Donnie Scheetz  
**DATE:** August 11, 2005  
**RE:** States for ID requirements chart: Connecticut

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### Connecticut

#### Summary:

All people who are registering for the first time, may submit a copy of ID at that time. If they do not, they must present ID at the poll. However, everyone must present ID at the polls anyway. The same requirements apply for voting absentee.

- **Statutes:** *Conn. Gen. Stat. § 9-232, Conn. Gen. Stat. § 9-12 (2004)*
  - **Passed:** passed in 1993, and amended in 2004
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - none
- **Case law (from annotations):**
  - none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - If you are registering by mail you may include a copy of ID. The same applies if you are registering in person for the first time.  
<http://www.sots.state.ct.us/ElectionsDivision/elecfrms/ed671.pdf>
      - The same requirements apply if the elector is voting absentee.  
<http://www.sots.state.ct.us/ElectionsDivision/HAVA/IDRequirements.pdf>
    - **At polls:**
      - All voters must provide ID at the polls.  
<http://www.sots.state.ct.us/ElectionsDivision/HAVA/HowToRegisterVotersEng.pdf>
  - **First time voters or all?**
    - All voters
  - **When?**
    - At the polls
  - **What types of ID?**
    - Driver's license, social security card, a rent receipt, a utility bil, or a form of ID with (a) elector's name and address, or (b) their name and signature, or (c) their name and photo. Any of the following will work: a copy of current valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows your name and address.  
<http://www.sots.state.ct.us/ElectionsDivision/elecfrms/ed671.pdf>

- **State or federal elections?**
  - All elections
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. *Id.*
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit. *Id.*
- **Challenge available at polls?**
  - Yes. *Conn. Gen. Stat. § 9-232*

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Donnie Scheetz  
**DATE:** August 11, 2005  
**RE:** States for ID requirements chart: Delaware

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### Delaware

#### Summary:

ID must be presented when registering. If it is not then it must be presented at the polls. If ID presented at registration or not a first time voter, then only a signature comparison is done. To vote absented one does not have to submit ID if properly registered; only an affidavit is required.

- **Statutes:** 15 Del. C. § 2011, 15 Del. C. § 2033
  - **Passed:**
    - 2003
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - none
- **Case law (from annotations):**
  - None
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - The elector must provide proof of identity to register. 15 Del. C. § 2011. Elector must submit with that person's application a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. 15 Del. C. § 2033
      - Should the person not include a copy of the required identification with the voter registration application, the voter shall provide a valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter prior to voting for the first time at a polling place in the State. 15 Del. C. § 2033
    - **At polls:**
      - No ID is required at the polls, unless none was submitted during registration [http://www.state.de.us/sos/gic/lwv/body/dgbody-08.shtml#P1251\\_139266](http://www.state.de.us/sos/gic/lwv/body/dgbody-08.shtml#P1251_139266)
  - **First time voters or all?**

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- Only first time voters must submit ID, and then only if none was submitted at registration. 15 Del. C. § 2033
- **When?**
  - Must be submitted during registration, or if not then at the polls.
- **What types of ID?**
  - Listed above
- **State or federal elections?**
  - All
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit. [http://www.state.de.us/sos/gic/lwv/body/dgbody-08.shtml#P1251\\_139266](http://www.state.de.us/sos/gic/lwv/body/dgbody-08.shtml#P1251_139266)
- **Challenge available at polls?**
  - Yes. [http://www.state.de.us/sos/gic/lwv/body/dgbody-08.shtml#P1251\\_139266](http://www.state.de.us/sos/gic/lwv/body/dgbody-08.shtml#P1251_139266)



## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Donnie Scheetz  
**DATE:** August 11, 2005  
**RE:** States for ID requirements chart: Florida

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### Florida

#### Summary:

- **Statutes:** Section 97.053, 97.0535 of the Florida Statutes
  - **Passed:**
    - 2003
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - none
- **Case law (from annotations):**
  - none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Yes. You must have a driver's license number, or Florida ID card number. If the elector has none of these, they must provide the last four digits of their social security number.  
<http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>
      - If registering by mail and are a first time voter, then must submit ID when the form is mailed. Id.
      - Absentee voters must provide proper ID prior to 7 p.m. election day. They can provide a copy of a current and valid utility bill, bank statement, government paycheck, or other government document containing their name and address of current residence. Id.
    - **At polls:**
      - Yes.  
<http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>
  - **First time voters or all?**
    - All <http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>
  - **When?**
    - Before voting  
<http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>
  - **What types of ID?**
    - Florida Driver's license, ID card issued by the Dept. of Highway Safety and Motor Vehicles, Passport, Employee badge or identification, Buyer's club ID, Debit/credit card, Military ID, Student ID, Retirement Center ID, Neighborhood association ID, Entertainment ID, Public assistance ID.  
<http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>

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- **State or federal elections?**
  - All
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional if you are a first time voter who registered by mail and have not previously provided the required ID.  
<http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit <http://election.dos.state.fl.us/publications/pdf/2004VoterGuide.pdf>
- **Challenge available at polls?**

Yes.

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Doug Koppel  
**DATE:** August 11, 2005  
**RE:** States for ID requirements chart: Georgia

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### **Georgia**

#### **Summary:**

In any election or primary, Georgia voters must produce valid identification at the polling place before being allowed to vote. A voter whose name is on the list but cannot provide proper identification at the polling place is allowed to cast a provisional ballot upon swearing or affirming to his identity. Georgia Administrative Code 183-1-12-.06(5)(a). The voter then has to present the proper ID by the end of the statutory period for verification of all provisional ballots, or the ballot will not be counted. Georgia Administrative Code 183-1-12-.06(5)(c). This period ends upon the closing of business on the second business day after the election. Georgia Administrative Code 183-1-12-.06(11)(d). This information is also found in Ga. Code Ann. §21-2-417. Appropriate forms of identification are listed in Ga. Code Ann. §21-2-417(a). When registering to vote for the first time, whether by mail or in person, the voter must supply proper identification as listed in Ga. Code Ann. §21-2-417(c). If a voter attempted to register by mail but failed to include the proper ID, he can present this identification at the polling place along with the required photo ID and vote as normal. Ga. Code Ann. §21-2-221.

#### **Statutes:**

Ga. Code Ann., §21-2-417 – proper identification presentation to poll workers. Proper ID includes driver's license, state ID card with photo, US passport, employee ID with photo, military ID with photo, or tribal identification card with photo.

Ga. Code Ann. §21-2-221 – identification required for registration, by mail or in person.

#### **Administrative Regulations:**

Ga Administrative Code 183-1-12 -.06 – provisional ballots; process and rules for distributing provisional ballot when proper ID is not presented.

#### **Pending legislation:**

2005 GA HB 597 (SN) – no substantive changes

2005 GA SB 84 (SN) – no substantive changes

#### **Case law:**

None.

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Doug Koppel  
**DATE:** August 11, 2005  
**RE:** States for ID requirements chart: Hawaii

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### Hawaii

#### **Summary:**

When an elector registers, Hawaii administrative law calls for a signed affidavit along with submission of the elector's social security number (not card), birth date, and address of residence. Hawaii Admin. Rules §2-51-20(a). The chief election officer may add additional requirements to the registration form. Hawaii Admin. Rules §2-51-20(b). This completed form serves as prima facie evidence of the voter's identity. However, if the identity is challenged, the clerk can request substantiating evidence. Hawaii Admin. Rules §2-51-24 (a), (b). It is not specified what evidence will be determined sufficient or what can or cannot be used as valid evidence.

At the polling place, Hawaii statutory law requires only that identification be produced if requested by a precinct official. HRS §11-136. What is to be accepted as proper identification, or when it should be requested of an elector, is not stated. Assumedly, failure to produce the ID would result in the elector being treated as a challenged voter and voting via challenged ballot pursuant to Hawaii Admin. Rules §2-51-45. Regulations from the Office of the Lieutenant Governor require identification to be produced to the official in charge of the poll book but does not state which forms of identification are to be sufficient. Hawaii Admin. Rules §2-51-80(b). The voter must also sign the poll book. Hawaii Admin. Rules §2-51-80(d).

#### **Statutes:**

HRS §11-136 – poll book, identification, voting

#### **Administrative Regulations:**

Hawaii Admin. Rules §2-51-20 – voter registration form requirements

Hawaii Admin. Rules §2-51-24 – rules for clerk's approval of registration

Hawaii Admin. Rules §2-51-80 – voting procedure at the polls

**Pending legislation:** None.

**Case law:** None.

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Idaho

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### Idaho

#### Summary:

Idaho law requires voters to supply their driver's license number or social security number at registration. Idaho Code § 34-411 (2004). It also requires identification for all first-time voters who registered by mail, as required under HAVA for voting in Federal elections. Idaho Code § 34-410 (2004). Voters may present a current photo identification, utility bill, bank statement, government check, paycheck, or any other government document with the name and address of the voter. Idaho Code § 34-410 (2004). Idaho also permits election day registration for all elections, and identification in the form of (1) a driver's license or state ID, (2) any document with the voter's address together with a picture ID, or (3) a student ID and tuition bill with address is required in order to same-day register. Idaho Code § 34-408A (2004).

Because Idaho provides for election day registration, it was exempted from the NVRA. Even so, Idaho accepts mail-in registrations anyway. However, because of the availability of election day registration, it is not required to provide a provisional voting scheme. Ben Ysursa, Secretary of State, State of Idaho: State Plan, 11 (2004), [http://www.idsos.state.id.us/ELECT/Idaho\\_State\\_Plan.pdf](http://www.idsos.state.id.us/ELECT/Idaho_State_Plan.pdf). Idaho believes election day registration is an adequate substitute. *Id.* Thus, if voters do not have proper identification at the poll, they cannot vote. *Id.*

There is no pending legislation in Idaho.

- **Statute:**
  - Idaho Code §34-410 (2004) & Idaho Code §34-408A (2004) & Idaho Code §34-411 (2004).
  - **Passed:**
    - §34-408A – 1994
    - §34-410 – 2003
    - §34-411 – 2003
- **Session law:** none
- **Pending legislation:** none
- **Case law (from annotations):**
  - none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?** Yes, but not beyond HAVA requirements. Idaho Code § 34-410 (2004).
  - **First time voters or all?**
    - First time voters registering by mail or election day registrants at polls. Idaho Code § 34-410 (2004); Idaho Code § 34-408A (2004).
  - **When?**
    - **At registration:** must supply driver's license number or the last four digits of the voter's social security number. Idaho Code § 34-411 (2004).

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- **Mail-in registration (HAVA):**
  - Codified requirements of HAVA for federal elections when elector mails registration, thus, voter can provide identification with registration or at the polls. Idaho Code § 34-410 (2004).
- **Election day registration at polls:**
  - Requires proof of residence, which can be done in 3 ways: (1) driver's license or Idaho identification card issued through the department of transportation; (2) any document which contains a valid address in the precinct together with a picture identification card; or (3) a current valid student identification card from a postsecondary educational institution in Idaho accompanied by a current student fee statement that contains the student's valid address. Idaho Code § 34-408A (2004).
- **What types of ID?**
  - For 1<sup>st</sup> time voters who registered by mail: (1) A current and valid photo identification; or (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Idaho Code § 34-410 (2004)(essentially HAVA requirements).
  - For election day registrants: (1) driver's license or Idaho identification card issued through the department of transportation; (2) any document which contains a valid address in the precinct together with a picture identification card; or (3) a current valid student identification card from a postsecondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address. Idaho Code § 34-408A (2004).
- **State or federal elections?**
  - Mail-in HAVA requirements: seems to be just Federal elections (Code seems to limit the ID requirements for mail-in first-time registrants to the scope of HAVA by stating "as required by HAVA"). Idaho Code § 34-410 (2004).
  - All other requirements: all elections (Code makes no distinction between state or local and federal elections for all other ID requirements, especially the election day registration requirements)
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - No provisional voting system because of exemption from NVRA because of same-day registration; so, no ID, no vote. Ben Ysursa, Secretary of State, State of Idaho: State Plan, 11 (2004), [http://www.idsos.state.id.us/ELECT/Idaho\\_State\\_Plan.pdf](http://www.idsos.state.id.us/ELECT/Idaho_State_Plan.pdf).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - No provisional voting system because of election-day registration; so, no ID, no vote. Ben Ysursa, Secretary of State, State of Idaho: State Plan, 11 (2004), [http://www.idsos.state.id.us/ELECT/Idaho\\_State\\_Plan.pdf](http://www.idsos.state.id.us/ELECT/Idaho_State_Plan.pdf).
- **Challenge available at polls?**
  - Yes, Idaho Code § 34-431 (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Illinois

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### Illinois

#### Summary:

Illinois law technically requires in person registration, but, as a result of a Court decision in 1996, Illinois permits mail-in registration under the NVRA for both State and Federal elections. Ill. Admin. Code tit. 26, § 216.30 (2005). In person registrants must show two forms of identification, and one of them must contain an address. 10 Ill. Comp. Stat. 5/4-10 (2005); 10 Ill. Comp. Stat. 5/5-9 (2005); 10 Ill. Comp. Stat. 5/6-37 (2005). The forms of identification accepted are: driver's license, social security card, public aid identification card, utility bill, employee or student identification card, credit card, or a civil, union or professional association membership card. *Id.* At the polls, voters who registered in person are only required to state their name and address prior to voting; however, voters who registered by mail must meet the HAVA requirements for identification. 10 Ill. Comp. Stat. 5/17-9 (2005); 10 Ill. Comp. Stat. 5/1A-16 (2005). Illinois law does not require any identification beyond HAVA for voters registering by mail.

There is a bill pending in the Senate which would require all voters to present proof of citizenship with their registration form and to present one form of identification with name, address, and photograph or two different forms of identification with name and address at the polls prior to receiving a ballot. SB 2081, 94<sup>th</sup> Gen. Assem., Reg. Sess. (Ill. 2005). Proof of citizenship documents include: birth certificate, naturalization certificate, driver's license if proof of citizenship was required, tribal identification, and passport. *Id.*

- **Statutes:**

- Provisions concerning in-person registration still in the code:
  - 10 Ill. Comp. Stat. 5/4-10 (2005)(for counties with a population of less than 500,000).
  - 10 Ill. Comp. Stat. 5/5-9 (2005)(for counties with a population of at least 500,000).
  - 10 Ill. Comp. Stat. 5/6-37 (2005)(for certain cities, villages and incorporated towns).
- Provision stating that mail-in registration in compliance with HAVA and NVRA is acceptable and ID provisions conform w/ HAVA (either provide ID w/ registration or at polls): 10 Ill. Comp. Stat. 5/1A-16 (2005).
- Identification at polls for in person registrants: 10 Ill. Comp. Stat. 5/17-9 (2005)
- **Passed:**
  - 5/4-10 & 5/5-9 & 5/6-37 – pre-1989
  - 5/1A-16 – 2003
  - 5/17-9 – at least since 1980s

- **Session law:** none
- **Pending legislation:**

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- SB 2081 – would require all voters at the polls to present one form of identification with name, address, and photograph or two different forms of identification with name and address; would also require all voters to submit proof of citizenship with their registration form (proof of citizenship: birth certificate, naturalization certificate, driver’s license if proof of citizenship was required, tribal identification, and passport) [2/25/05- Introduced, referred to Rules Committee]. SB 2081, 94<sup>th</sup> Gen. Assem., Reg. Sess. (Ill. 2005).
- HB 1968 – expands the institutions which must provide voter registration forms [passed both houses 5/28/05]. HB 1968, 94<sup>th</sup> Gen. Assem., Reg. Sess. (Ill. 2005).
- HB 715 – adds higher education institutions to those which must provide voter registration forms [passed both houses 5/17/05]. HB 715, 94<sup>th</sup> Gen. Assem., Reg. Sess. (Ill. 2005).
- **Case law (from annotations):**
  - *Orr, et al. v. Edgar, et al.*, 670 N.E.2d 1243 (Ill. App. Ct. 1 Dist. 1996): ruling that the two-tiered system of registration for State and Federal elections violated the voter registration notice provisions in the Illinois Vehicle Code and required the applicant be given notice of their right to vote in state and local elections (after which the State honored mail-in registration as registration for both Federal and State elections).
  - *Jordan v. Officer*, 525 N.E. 2d 1067 (Ill. App. Ct. 5 Dist. 1988): unsuccessful candidates do not waive the right to challenge the eligibility of voters if they failed to use the procedures for poll site challenges (10 ILCS 5/17-9 (2005)).
- **Administrative regulations:**
  - Ill. Admin. Code tit. 26, § 216.30 (2005): implemented NVRA, applications complying with NVRA register voter for Federal and State elections.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Still law in effect requiring in-person registration. Law states that a registrant must have two forms of identification, and one of them must contain the voter’s address, many forms being acceptable. Homeless persons must produce proof of use of a certain address, but the address does not have to be on the identifications. 10 Ill. Comp. Stat. 5/4-10 (2005); 10 Ill. Comp. Stat. 5/5-9 (2005); 10 Ill. Comp. Stat. 5/6-37 (2005).
      - Another statute complies with NVRA and HAVA and allows mail-in registration and requires ID be provided at polls or with registration (essentially HAVA codified). 10 Ill. Comp. Stat. 5/1A-16 (2005).
        - Mail-in registration registers voter for both State and Federal elections as of October 1996. Ill. Admin. Code tit. 26, § 216.30 (2005).
    - **At polls:** Only required to state name and address, can ask questions from information provided at registration. 10 Ill. Comp. Stat. 5/17-9 (2005).
      - HAVA applies if no identification provided with registration. 10 Ill. Comp. Stat. 5/1A-16 (2005).
  - **First time voters or all?**



- First time registrants only for the HAVA requirements for mail-in registrants. 10 Ill. Comp. Stat. 5/1A-16 (2005).
- **When?**
  - At registration (with mailing or in person) or if not (and mail-in registration), at polls before voter votes for first time. 10 Ill. Comp. Stat. 5/1A-16 (2005).
- **What types of ID?**
  - For in person registrants: driver's license, social security card, public aid identification card, utility bill, employee or student identification card, credit card, or a civil, union or professional association membership card. 10 Ill. Comp. Stat. 5/4-10 (2005); 10 Ill. Comp. Stat. 5/5-9 (2005); 10 Ill. Comp. Stat. 5/6-37 (2005).
  - For mail-in registrants: Either (i) a copy of a current and valid photo identification, or (ii) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. 10 Ill. Comp. Stat. 5/1A-16 (2005).
- **State or federal elections?**
  - Seems to apply to all elections since it is in the state code w/ no distinction between federal and state. 10 Ill. Comp. Stat. 5/1A-16 (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - HAVA – provisional ballot.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - No law – assume HAVA applies then.
- **Challenge available at polls?**
  - Yes. If challenged, must provide two forms of ID and execute an affidavit, otherwise provisional ballot. 10 Ill. Comp. Stat. 5/18A-5 (2005).
  - Poll watchers permitted. 10 Ill. Comp. Stat. 5/17-23 (2005).

030185

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Iowa

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### Iowa

#### Summary:

Iowa has essentially codified the requirements of HAVA and requires voters who registered by mail to provide identification either with their registration or prior to voting in the voter's first election, whether State or Federal. Iowa Code § 48A.8 (2005). The forms of identification accepted are the same forms of identification permitted under HAVA. *Id.* If no identification was provided with the mailed registration form and the voter has no identification at the polls, the voter may vote provisionally. *Id.* In order for the vote to count, the voter must later bring or send a copy of identification proving his/her identity, as well as sign an affidavit at the polls affirming his/her identity. *Id.*

In order to register in Iowa, all voters must provide their driver's license numbers, state identification card numbers, or social security numbers unless they notify the State that they do not have a state identification card or social security number. Iowa Code § 48A.11 (2005). When a voter lacks one of these identifying numbers, the State assigns one to the voter. The information provided on the registration form is checked against other State databases. At the polls, precinct officials are permitted, but not required, to ask for some identification with a signature to verify the identity of the voter. Iowa Code § 49.77 (2005).

Iowa law permits voter challenges at the polls. Iowa Code § 49.79 (2005). Currently, there are no pending bills concerning voter identification.

- **Statute:**
  - Iowa Code § 48A.8 (2005)
  - Iowa Code § 48A.11 (2005)
  - Iowa Code § 49.77 (2005)
  - **Passed:**
    - § 48A.8 – 2004
    - § 48A.11 – 2004
    - § 49.77 – 1983
- **Session law:** HF 227, 81<sup>st</sup> Gen. Assem., 1<sup>st</sup> Reg. Sess. (Iowa 2005)(enacted)(specifying that driver's license numbers provided on registration form must be Iowa driver's licenses).
  - Signed by governor 4/6/05
- **Pending legislation:**
  - SF 152, 81<sup>st</sup> Gen. Assem., 1<sup>st</sup> Reg. Sess. (Iowa 2005)(allowing for late registration, up until voting, but requiring proof of residency for late registrants) [in Senate committee 2/16/05]
  - HF 793, 81<sup>st</sup> Gen. Assem., 1<sup>st</sup> Reg. Sess. (Iowa 2005)(makes signature on application required for registration) [passed House 3/31/05, in Senate committee 4/5/05]

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- SF 364, 81<sup>st</sup> Gen. Assem., 1<sup>st</sup> Reg. Sess. (Iowa 2005)(makes signature on application required for registration) [In Senate committee 4/14/05]
- **Case law (from annotations):** none
- **Administrative regulations:** Title 821 in the Iowa Administrative Code pertains to election registration but no provision is more specific as to voter identification.
- **What the law requires:**
  - **Is ID required?**
    - **Mail in registrants:** identification required at either registration or at polls, essentially codifies HAVA, requires identification for a mail-in registrant voting for the first time. Iowa Code § 48A.8 (2005).
    - **For registration:** must provide driver's license number, state identification card number or the last four digits of the social security number on the registration form or the application will be rejected or indicate that the voter has none of those and a unique number will be assigned. Iowa Code § 48A.11 (2005).
    - **At polls:** precinct officials *may* require some identification for signature verification if they do not personally know the voter. Iowa Code § 49.77 (2005).
  - **First time voters or all?**
    - First time voters only: HAVA requirements codified - first time voters who have never voted in a Federal election. Iowa Code § 48A.8 (2005).
  - **When?**
    - Mail in registrants – either at registration or at polls. Iowa Code § 48A.8 (2005).
  - **What types of ID?**
    - Mail in registrants:
      - Current and valid photo identification
      - Utility bill
      - Bank statement
      - Paycheck
      - Government check
      - Other government document
      - Iowa Code § 48A.8 (2005).
  - **State or federal elections?**
    - Seems to apply to all elections, as the wording of Iowa Code § 48A.8 (2005) states that “an eligible elector who registers by mail and who has not previously voted in an election for federal office in the county ... shall be required to provide identification documents when voting for the first time in the county” (does not mention federal election, rather says “when voting for the first time in the county”).
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Provisional ballot. Iowa Code § 48A.8 (2005).
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - Vote provisionally subject to normal provisional ballot rules. Iowa Code § 48A.8 (2005). Normal provisional ballot rules require that the voter bring or

send identification later and sign an affidavit prior to voting. Iowa Code § 49.81 (2005).

- **Challenge available at polls?**
  - Yes, by any registered voter or precinct official. Iowa Code § 49.79 (2005).

030189

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Kansas

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### Kansas

#### Summary:

Under Kansas law, all voters in all types of elections are required to state their name and address, if asked, prior to voting. Kan. Stat. Ann. § 25-2908(b) (2004). As a result of HAVA, Kansas enacted a statute requiring first time voters in *all* elections to provide identification either with their registration or when they vote for the first time. Kan. Stat. Ann. § 25-2908(c)(4) & (h) (2004). These voters may provide a Kansas driver's license, state identification card, utility bill, bank statement, paycheck, government check, or other government document. Kan. Stat. Ann. § 25-2908(d) (2004). If they do not provide the identification, the voters may vote a provisional ballot. Kan. Stat. Ann. § 25-2908(e) (2004). In order for the provisional ballot to be counted, the voter must provide one of the identification documents to county election officers before the canvass begins. *Id.*

There is no pending legislation in Kansas. Interestingly, Kansas election law allows for limited elections by mail, and that provision of the Kansas Code has been challenged and ruled constitutional based on the fact that the compelling interest in voter participation outweighed the interest in preventing voter fraud. Mail Ballot Election Act, Kan. Stat. Ann. § 25-432 (2004); *Sawyer v. Chapman*, 729 P.2d 1220 (Kan. 1986).

- **Statute:**
  - Kan. Stat. Ann. § 25-2908 (2004).
  - **Passed:** In 1861 but section significantly rewritten in 2004 and HAVA compliant section added which applied HAVA requirements to both State and Federal elections.
- **Session law:** none
- **Pending legislation:** none
- **Case law (from annotations):**
  - *Sawyer v. Chapman*, 729 P.2d 1220 (Kan. 1986): declared the Act constitutional; compelling state interest in increased voter participation outweighs fraud potential and loss of secrecy.
    - Could be important – essentially ruled that voter participation is more important than voter fraud potential.
- **Administrative regulations:** no ID provisions. *See generally* Kan. Admin. Regs. Agency 7.
- **What the law requires:**
  - **Is ID required?**
    - **For registration or at polls/HAVA:** must provide identification (HAVA codified). Kan. Stat. Ann. § 25-2908(c)(4) (2004).
    - **At polls:** required to announce name and address. Kan. Stat. Ann. § 25-2908(b) (2004).

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- **First time voters or all?**
  - First time voters only must provide identification at polls or at registration. Kan. Stat. Ann. § 25-2908(c)(4) (2004).
  - All voters must provide their name and address each time they vote. Kan. Stat. Ann. § 25-2908(b) (2004).
- **When?**
  - HAVA compliance: either at registration or at polls. Kan. Stat. Ann. § 25-2908 (2004).
- **What types of ID?**
  - Kansas driver's license
  - Nondriver's identification card
  - Utility bill
  - Bank statement
  - Paycheck
  - Government check
  - Other government document
  - Kan. Stat. Ann. § 25-2908(d) (2004).
  - Specifically:
    - The identification presented must have the voter's name and 1 of these 2 things: current address or photo
    - Office of Secretary of State Ron Thornburgh & the Kansas County Clerks and Election Officials Association, Kansas Election Standards, I-4 (2004), at [http://www.kssos.org/elections/elections\\_reform\\_standards.html](http://www.kssos.org/elections/elections_reform_standards.html).
- **State or federal elections?**
  - All elections, no distinction made in § 25-2908(h), says "any election". Kan. Stat. Ann. § 25-2908(h) (2004).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Kan. Stat. Ann. § 25-2908(e) (2004).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Vote a provisional ballot and must provide identification types described above either in person, electronically, or by mail to county election officers before canvass in order for vote to be counted. Kan. Stat. Ann. § 25-2908(e) (2004).
- **Challenge available at polls?**
  - Election judges may challenge at polls. Kan. Stat. Ann. § 25-414(a) (2004).
- **Miscellaneous:**
  - Kansas law allows for mail ballot elections when the election involves an issue rather than a candidate and the election is bipartisan. Mail Ballot Election Act, Kan. Stat. Ann. § 25-432 (2004).



## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jaime Lebo  
**DATE:** 9/1/05  
**RE:** States for ID requirements chart: Kentucky

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### Kentucky

#### Summary:

All Kentucky voters are required to present identification before being allowed to vote on election day. KRS §117.227 (2004) and 31 KAR 4:010 (2005). This can be by personal acquaintance, or by a document, such as a driver license, Social Security card, credit card, or any identification card that bears both the picture and signature of the voter. *Id.*

If the voter does not have identification, then they must sign a written affirmation that they are qualified to vote and then must vote provisionally. 31 KAR 6:020.

- **Statutes:** KRS §117.227 (2004).
  - Effective: July 15, 2002
    - Amended 2002 Ky. Acts ch. 10, sec. 1, effective July 15, 2002. –Created 1988 Ky. Acts ch. 341, sec. 9, effective July 15, 1988.
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - none
- **Case law (from annotations):**
  - none
- **Administrative regulations:** 31 KAR 4:010 (2005). In effect as of April 22, 2005.
  - 31 KAR 6:020: provides procedures for voting provisionally
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - No. KRS §116.115
    - **At polls:**
      - All voters are required to present identification before being allowed to vote on election day. KRS §117.227 (2004) and 31 KAR 4:010.
  - **First time voters or all?**
    - All voters are required to present identification before being allowed to vote on election day. KRS §117.227 (2004) and 31 KAR 4:010.
  - **When?**
    - At polls. KRS §117.227 (2004)
  - **What types of ID?**
    - Personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. KRS §117.227 (2004). Also, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and

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which has been approved in writing by the State Board of Elections. 31 KAR 4:010.

- Voters are required to give their name and address to the clerk of the election. If his name is listed on the precinct list, he is to sign the precinct list and his signature should be compared with that on the original registration form. KRS §117.225 (2004).
- **State or federal elections?**
  - Both. KRS §117.227 (2004)
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. 31 KAR 6:020.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Written affirmation. 31 KAR 6:020.
- **Challenge available at polls?**
  - Yes. KRS §117.245 (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jaime Lebo  
**DATE:** August 28, 2005  
**RE:** States for ID requirements chart: Louisiana

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### Louisiana

#### Summary:

Louisiana voters are required to identify themselves and state their address to election officials at the polls. La. R.S. §18:562 (2005). In addition, they must provide a picture identification card. *Id.* If the voter does not possess the requisite identification, he must sign an affidavit and provide further identification that is requested by the commissioner. *Id.* If the further identification is provided, then the voter may vote on a regular ballot. *Id.*

Louisiana has early voting, but before voting, the voter is required to submit his Louisiana driver's license, his current registration certificate, or other identification card to compare with the descriptive information on the precinct register. La. R.S. §18:1309(D)(1) (2005).

When registering, a Louisiana voter must provide identification which reasonably and sufficiently establishes his identity, age, and residence. La. R.S. §18:105 (2005).

- **Statutes:** La. R.S. 18:562 (2005).
- **Session law/recent legislation passed:** 2005 La. Sess. Law Serv. Act 220 (H.B. 336): providing provisions for early voting. Will become activated on January 1, 2006.
  - Act 423 of 2003 Regular Legislative Session implements provisional voting in Louisiana only in elections for federal office. Louisiana Secretary of State Elections Division, Lu<http://www.sec.state.la.us/elections/elections-index.htm#votereg>.
- **Pending legislation:**
  - none
- **Case law (from annotations):**
  - none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - The applicant's driver's license number or last 4 digits of social security number is required on the form. If applicant has neither, then he must attach either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the applicant. La. R.S. §18:104 (2005).
      - Also, the applicant must submit his current Louisiana driver's license, if he has one, or his birth certificate, or other documentation which

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reasonably and sufficiently establishes the applicant's identity, age, and residency. La. R.S. §18:105 (2005).

- **At polls:**
  - All voters must identify themselves by stating their name and address to the commissioner. La. R.S. §18:562(A)(1) (2005).
  - Each voter must also provide identification. La. R.S. §18:562(A)(2) (2005).
- **Early voting/Absentee voting:**
  - Before any voter is allowed to vote during early voting, the voter is required to submit his Louisiana driver's license, his current registration certificate, or other identification card to compare with the descriptive information on the precinct register. La. R.S. §18:1309(D)(1) (2005).
- **First time voters or all?**
  - All voters. La. R.S. §18:562 (2005).
- **When?**
  - At polls. La. R.S. §18:562 (2005).
- **What types of ID?**
  - Louisiana driver's license, Louisiana special identification card issued pursuant to R.S. §40:1321, or other generally recognized picture identification card. La. R.S. §18:562(A)(2) (2005).
  - In addition, the applicant's signature on the precinct register should be compared to his signature on his picture identification. La. R.S. §18:652(C) (2005).
- **State or federal elections?**
  - Both. La. R.S. §18:562 (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Regular ballot. La. R.S. §18:562(A)(2) (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Voters who have no picture ID and bring only a utility bill, payroll check or government document that includes their name and address will have to sign an affidavit furnished by the Elections Division in order to vote. La. R.S. §18:562(A)(2) (2005).
  - The applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioner. La. R.S. §18:562 A(2) (2005).
- **Challenge available at polls?**
  - Yes. La. R.S. §18:565 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Maine

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### Maine

#### Summary:

Maine law allows for in person registration and registration by mail. It also allows voters to register up until and on election day. Me. Rev. Stat. Ann. tit. 21-A, § 122 (2004). However, any voter registering nine or less days prior to an election (Federal or State) or on election day must register in person and show proof of identity and residency. Me. Rev. Stat. Ann. tit. 21-A, § 121 (2004). Otherwise, the voter must only complete an application including his/her name; address; date of birth; signature; and driver's license, state identification number or social security number (if the voter has one of these). Me. Rev. Stat. Ann. tit. 21-A, § 152 (2004). There is no identification requirement for voters at the polls beyond HAVA. At the polls, voters that have satisfied HAVA's requirements must only announce their name and address in order to vote. Me. Rev. Stat. Ann. tit. 21-A, § 671 (2004).

The types of identification that are permissible as proof of residency or identity for in person registrants are not specifically stated, but I would assume the requirements are fairly liberal since no specific types are enumerated or suggested on the Secretary of State's website. Maine permits all types of identification permissible under HAVA in order to meet the HAVA requirements for identification. Further, HAVA seems to apply to State and Federal elections in Maine, as the Secretary of State updated the State's registration form and included a disclaimer that voters must submit identification with their registration. Mathew Dunlap, Secretary of State, State of Maine Voter Guide 2004 (2004), at <http://www.maine.gov/sos/cec/elec/votguid04.htm>; State of Maine Preliminary State Plan for the Implementation of the Help America Vote Act of 2002, 17, at <http://www.maine.gov/sos/cec/elec/hava/havaplan.doc>. The disclaimer makes no distinction between Federal and State elections. *Id.*

Without identification at the polls (does not matter if registering at polls or required by HAVA) a voter may vote a challenged ballot. Me. Rev. Stat. Ann. tit. 21-A, § 673 (2004). There is no pending legislation concerning voter identification.

#### • Statute:

- Me. Rev. Stat. Ann. tit. 21-A, § 671 (2004).
- Me. Rev. Stat. Ann. tit. 21-A, § 152 (2004).
- Me. Rev. Stat. Ann. tit. 21-A, § 121 (2004).
- Me. Rev. Stat. Ann. tit. 21-A, § 122 (2004).
- **Passed:**
  - § 671 – 1985 (at least)
  - § 152 – 1985 (at least); 2003 added a place on registration form for HAVA information

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- § 121 – 1985; 1993 added provision requiring identification for voters registering close to election; 1999 established 9 days as time period which requires in-person registration and proof of identity and residency
  - § 122 – 1985 – added election day registration provision; the in-person registration language has been in the Code at least that long, possibly since 1954.
- **Session law:** none
- **Pending legislation:** none
- **Case law (from annotations):** none
- **Administrative regulations:** nothing in administrative code on voter identification.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Not if the registration is received at least 10 days prior to the election, only name, address, date of birth, signature, and driver’s license, state identification number or social security number (if applicable) are required. Me. Rev. Stat. Ann. tit. 21-A, § 152 (2004).
        - Maine law allows in person registration up until and including election day. Me. Rev. Stat. Ann. tit. 21-A, § 122 (2004). Anyone who registers nine or less days prior to election day or on election day must register in person and must show proof of identity and residency. Me. Rev. Stat. Ann. tit. 21-A, § 121 (2004).
    - **At polls:**
      - No, a voter must only announce his/her name and, if asked, his address. Me. Rev. Stat. Ann. tit. 21-A, § 671 (2004).
    - HAVA requirements, of course, apply.
  - **First time voters or all?**
    - The registration identification requirements obviously apply only to new registrants.
    - There are no requirements for identification at the polls applying to all voters in Maine.
  - **When?**
    - There are only identification requirements for registration, not prior to voting.
  - **What types of ID?**
    - For the registration within nine days of election day or on election day – no types are specified.
    - HAVA – all types permissible under HAVA. (see below)
  - **State or federal elections?**
    - The provisions requiring identification for registration within nine days of election day apply to all elections. Me. Rev. Stat. Ann. tit. 21-A, § 121 (2004).
    - **HAVA:** seems to apply to all elections. Maine law designated the Secretary of State as the authority for promulgating rules complying with HAVA. Me. Rev. Stat. Ann. tit. 21-A, § 222 (2004). The Secretary of State updated Maine’s registration form to comply with the HAVA identification

requirements for mail-in registrants by placing a disclaimer on the form that the voter must submit a copy of a Maine driver's license or other valid photo ID, a current utility bill, or bank statement, or paycheck, or other government document that shows the voter's name and address with the registration. Mathew Dunlap, Secretary of State, State of Maine Voter Guide 2004 (2004), at <http://www.maine.gov/sos/cec/elec/votguid04.htm>; State of Maine Preliminary State Plan for the Implementation of the Help America Vote Act of 2002, 17, at <http://www.maine.gov/sos/cec/elec/hava/havaplan.doc>.

- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - If the voter registers nine or less days prior to the election or on election day and has no proof of residency and identity, the voter must cast a challenged ballot. Me. Rev. Stat. Ann. tit. 21-A, § 121 (2004).
  - If the voter is subject to HAVA identification requirements but does not provide identification, the voter must also cast a challenged ballot. State of Maine Preliminary State Plan for the Implementation of the Help America Vote Act of 2002, 17, at <http://www.maine.gov/sos/cec/elec/hava/havaplan.doc>.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Challenged ballot, subject to normal challenged ballot rules. Nothing for voter to do post-election. In fact, challenged ballots are counted the same as regular ballots unless they affect the outcome of the election. Me. Rev. Stat. Ann. tit. 21-A, § 696 (2004).
- **Challenge available at polls?**
  - Yes, any voter of the municipality may challenge any other voter for cause. The voter then votes a challenged ballot. Me. Rev. Stat. Ann. tit. 21-A, § 673 (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 23, 2005  
**RE:** States for ID requirements chart: Maryland

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### Maryland

#### Summary:

Maryland law does not require any identification beyond the HAVA requirements for first time registrants who register by mail. Md. Regs. Code tit. 33, § 05.02.02 (2005); Md. Regs. Code tit. 33, § 07.06.01 (2005). The types of identification permitted are the same as permitted under HAVA. Md. Regs. Code tit. 33, § 05.02.02 (2005); Md. Regs. Code tit. 33, § 07.06.02 (2005). Maryland applies this standard to State and Federal elections. Md. Regs. Code tit. 33, § 05.02.02 (2005); Md. Regs. Code tit. 33, § 07.06.01 (2005). Without identification at the polls or registration, a new voter may vote a provisional ballot but must bring identification before the canvass begins in order for the vote to be counted. Md. Code Ann., Elec. Law § 11-303 (d)(4)(iii) (2005).

Recently, Maryland passed a law altering State election law to comply with the voter registration list requirements of HAVA, but the law does not address the identification provisions of HAVA. 2005 Md. Laws 572. There are three bills pending in the House which would require identification at the polls. HB 105, 419<sup>th</sup> Sess., Reg. Sess. (Md. 2005); HB 1279, 419<sup>th</sup> Sess., Reg. Sess. (Md. 2005); HB 1166, 419<sup>th</sup> Sess., Reg. Sess. (Md. 2005).

- **Statutes:** none concerning HAVA's identification requirements or identification at polls.
- **Administrative regulations:**
  - Md. Regs. Code tit. 33, § 05.02.02 (2005).
  - Md. Regs. Code tit. 33, § 07.06.01 (2005).
  - Md. Regs. Code tit. 33, § 07.06.02 (2005).
  - Md. Regs. Code tit. 33, § 07.06.05 (2005).
- **Session law/recent legislation passed:**
  - 2005 Md. Laws Ch. 572: Altering State election law to comply with the voter registration list requirements of the Help America Vote Act of 2002; establishing a statewide voter registration list; requiring the State Administrator of Elections to perform specified tasks; establishing when specified voters are restored to active status; altering requirements to challenge special actions of local election boards; providing for a delayed effective date; but not enacting identification provision [5/26/05 signed by governor]
    - Bill HB 723
- **Pending legislation:**
  - HB 1166, 419<sup>th</sup> Sess., Reg. Sess. (Md. 2005): would require proof of citizenship at registration – birth certificate, passport, or naturalization documents; require that voters present a voter identification card at the polls. [3/7/05 reported from committee unfavorably]
  - HB 1279, 419<sup>th</sup> Sess., Reg. Sess. (Md. 2005): would require identification at the polls from all voters in the form of a driver's license, state identification card, or voter identification card. If the voter has none of those, they may present any

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other government-issued identification that has the voter's name, address, and date of birth; or, the voter may state the month and day of his/her birth and have it verified against the precinct register. [3/7/05 reported from committee unfavorably]

- HB 105, 419<sup>th</sup> Sess., Reg. Sess. (Md. 2005): would require identification at the polls from all voters in the form of a driver's license, state identification card, or voter identification card. If the voter has none of those, they may present any other government-issued identification that has the voter's name, address, and date of birth; or, the voter may state the month and day of his/her birth and his address and have it verified against the precinct register. [3/26/05 reported from committee unfavorably]
- **Case law (from annotations):** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - HAVA requirements: provide driver's license number, MVA identification card, or last four digits of social security number OR identification (see below for forms). Md. Regs. Code tit. 33, § 05.02.02 (2005); Md. Regs. Code tit. 33, § 07.06.01 (2005).
    - **At polls:**
      - Orally state month and day of birth and compare it to precinct register; verify address. Md. Code Ann., Elec. Law § 10-310 (2005).
  - **First time voters or all?**
    - Just first time voters – no requirement beyond HAVA. Md. Regs. Code tit. 33, § 07.06.01 (2005).
  - **When?**
    - At registration or at polls. Md. Regs. Code tit. 33, § 05.02.02 (2005).
  - **What types of ID?**
    - A copy of a current and valid photo identification (i.e., Maryland driver's license, MVA-issued identification card, student photo identification card, or employee photo identification card).
    - OR
    - A copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the voter's name and address.
    - Md. Regs. Code tit. 33, § 05.02.02 (2005); Md. Regs. Code tit. 33, § 07.06.02 (2005).
  - **State or federal elections?**
    - No distinction made between requirements for State or Federal elections. Md. Regs. Code tit. 33, § 05.02.02 (2005); Md. Regs. Code tit. 33, § 07.06.01 (2005).
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Provisional ballot. Md. Code Ann., Elec. Law § 9-404 (b)(2)(iii) (2005); Md. Regs. Code tit. 33, § 07.06.05 (2005).

- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Provide identification before canvass begins. Md. Code Ann., Elec. Law § 11-303 (d)(4)(iii) (2005); Maryland State Board of Elections Webpage, [http://www.elections.state.md.us/registered\\_voters/election\\_day\\_faq.html](http://www.elections.state.md.us/registered_voters/election_day_faq.html).
- **Challenge available at polls?**

Yes. Md. Code Ann., Elec. Law § 10-311 (2005); Md. Code Ann., Elec. Law § 10-312 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 27, 2005  
**RE:** States for ID requirements chart: Massachusetts

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### Massachusetts

#### Summary:

Massachusetts does not require any identification beyond HAVA for voters who register by mail and are voting for the first time in a federal election. Mass. Gen. Laws ch. 54, §76B (2005). They must present identification either at the polls or at registration or supply their driver's license or social security number on their registration form. *Id.* The forms of acceptable identification are the same as under HAVA, and this requirement seems to apply only to federal elections. Mass. Gen. Laws ch. 54, § 76B (b)(2)(A)(a) (2005); Mass. Gen. Laws ch. 54, § 76B (b)(1) (2005). Without proper identification, the voter may execute an affidavit and vote a provisional ballot. Mass. Gen. Laws ch. 54, § 76B (b)(2)(B)(i) (2005); Mass. Gen. Laws ch. 54, § 76C (b) (2005).

Massachusetts law also allows for election officials to request identification of any voter randomly or based on reasonable suspicion. Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005). This requirement applies to all voters, not just new registrants. *Id.* Upon request, the voter must produce written identification, which includes: driver's license, recent utility bill, rent receipt, lease, voter registration affidavit copy, or any other printed identification which contains the voter's name and address. *Id.* If the voter does not provide the identification, he may vote normally but may be challenged. *Id.*

There are several pending bills which concern voter identification. HB 92, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005) would apply HAVA to all elections, rather than just federal elections. HB 46, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005) would require voters to recite their date of birth (in addition to name and residence) prior to voting. HB 51, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005) would require all voters to provide government-issued identification prior to voting with no allowance for provisional ballots. HB 112, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005) is similar to HB 51 but allows the voter to satisfy the identification requirement with an employee identification card. HB 132, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005) requires identification of all voters but allows many more forms of identification than HB 51 or 112.

- **Statutes:** Mass. Gen. Laws ch. 54, § 76B (2005).
  - **Passed:** 2004
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - HB 46, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005): requires voters to state their name, residence, and date of birth prior to voting (date of birth added by the bill) [1/26/05 introduced and referred to committee]
  - HB 51, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005): rewrites § 76B and § 76, requiring identification for all voters prior to voting, which includes a Massachusetts driver's license, an official Massachusetts photo identification card,

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a United States passport, or a Social Security card; does not provide for provisional balloting system for those without identification. [1/26/05 introduced and referred to committee]

- HB 92, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005): applies HAVA requirements to all elections, primaries, caucuses, and preliminaries, not just federal elections. [1/26/05 introduced and referred to committee]
- HB 112, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005): rewrites § 76B and § 76, requiring identification for all voters at the polls, which includes a voter registration card, social security card, valid Massachusetts drivers license, or any other identification card issued by a government agency, or any valid employee identification card containing a photograph of the voter; provides for no provisional balloting system for those without identification. [1/26/05 introduced and referred to committee]
- HB 132, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005): rewrites § 76B completely, requiring identification for all voters at the polls including: a valid driver's license, birth certificate, fishing or hunting license, student identification card from a post-secondary education institution in the Commonwealth or such other documentation which establishes the applicant's identity, age and residency. [1/26/05 introduced and referred to committee]
- **Case law (from annotations):** none
- **Administrative regulations:**
  - Mass. Regs. Code tit. 950, § 52.03 (2005): Voting procedure and challenges for precincts using paper ballots.
  - Mass. Regs. Code tit. 950, § 53.03 (2005): Voting procedure and challenges for precincts using voting machines.
  - Mass. Regs. Code tit. 950, § 54.04 (2005): Voting procedure and challenges for precincts using electronic voting systems.
- **What the law requires:**
  - **Is ID required?**
    - **For registration/at polls/HAVA requirements:**
      - Must present identification either with registration or at polls prior to voting unless the voter supplied his/her driver's license number or social security number on his/her registration form. Mass. Gen. Laws ch. 54, § 76B (2005).
    - **At polls/all voters:**
      - State name and address, if requested. Mass. Gen. Laws ch. 54, § 76 (2005); Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005).
      - **Id at polls for all:** The election officers may ask for written identification randomly or based on reasonable suspicion. Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005).
  - **First time voters or all?**
    - **HAVA requirements:** First time voters who have not previously voted in an election for federal office. Mass. Gen. Laws ch. 54, § 76B (b)(1)(b) (2005).

- **At polls/random ID checks:** However, all voters are subject to random identification checks or checks based on reasonable suspicion. Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005).
  - **When?**
    - **HAVA requirement:** Either at registration or at polls. Mass. Gen. Laws ch. 54, § 76B (2005).
  - **What types of ID?**
    - **For HAVA / new registrants who registered by mail:**
      - Current and valid photo identification.
      - OR
      - Current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.
      - Mass. Gen. Laws ch. 54, § 76B (b)(2)(A)(a)(2005).
    - **For ID at polls for all voters upon request (random checks):**
      - Driver's license, recent utility bill, rent receipt, lease, voter registration affidavit copy, or any other printed identification which contains the voter's name and address. Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005).
  - **State or federal elections?**
    - **HAVA:** Language of statute says "a person asserting a right to vote in an election for federal office," and implies that it applies to federal elections only. Mass. Gen. Laws ch. 54, § 76B (b)(1) (2005).
      - *See also* HB 92, which strikes this language and applies the identification requirement to all elections. HB 92, 184<sup>th</sup> Gen. Ct., 2005 Reg. Sess. (Mass. 2005).
    - **Random checks of all voters at polls:** applies to all elections.
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - **HAVA:** Provisional ballot. Mass. Gen. Laws ch. 54, § 76B (b)(2)(B)(i) (2005).
    - **Random ID checks of all voters at polls:** If the voter does not provide identification, the voter may still vote but can be challenged. Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005).
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - A voter subject to HAVA who does not provide identification may sign an affidavit and vote provisionally. Mass. Gen. Laws ch. 54, § 76C (b) (2005).
  - **Challenge available at polls?**
    - Yes. Mass. Gen. Laws ch. 54, § 85A (2005); Mass. Regs. Code tit. 950, § 52.03 (2005); Mass. Regs. Code tit. 950, § 53.03 (2005); Mass. Regs. Code tit. 950, § 54.04 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Michigan

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### Michigan

#### **Summary:**

Michigan law requires that certain information be supplied on the registration form, including the voter's state identification card or driver's license number (if the voter has one), but does not require any identification for registration. Mich. Comp. Laws Ann. § 168.495 (2005). At the polls and registration, Michigan does not require any identification beyond the requirement for first time voters in Federal elections. Mich. Comp. Laws Ann. § 168.509t (2) (2005).

In 1996, Michigan enacted a statute requiring photo identification for all voters prior to voting. Mich. Comp. Laws Ann. § 168.523 (2005). However, immediately after its passage, the Attorney General declared that the statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies.

Michigan's provisional ballot rules for voters without identification under HAVA have been recently challenged. *Bay County Democratic Party v. Land*, 347 F. Supp. 2d 404 (E.D. Mich. 2004). Michigan requires that first-time voters without the identification required by HAVA vote provisionally and must return with identification within six days after the election in order for their vote to be counted. *Id.* The District Court ruled that the requirement was valid under the First and Fourteenth Amendments and under HAVA and Federal law. *Id.*

- **Statute:**
  - Mich. Comp. Laws Ann. § 168.495 (2005).
  - Mich. Comp. Laws Ann. § 168.509t (2005).
  - **Passed:**
    - § 168.495 – 1954, has been refined over time, but requirement since 1954.
    - § 168.509t – 1994 recognized registration by mail contingent on NVRA being constitutional; HAVA compliant portion added in 2004.
- **Session law:** none
- **Pending legislation:** HB 4228, 93<sup>rd</sup> Legis., 1<sup>st</sup> Reg. Sess. (Mich. 2005)(changing the name of the registration from “affidavit” to “application”) [referred to House Committee 2/8/05]
- **Case law (from annotations):**
  - *Bay County Democratic Party v. Land*, 347 F. Supp. 2d 404 (E.D. Mich. 2004): requirement that a voter without identification under HAVA on election day return with proper identification within six days after the election in order for his/her vote to be counted does not violate First or Fourteenth Amendment rights or violate HAVA or other Federal law.
  - Op. Atty. Gen. 1997, No. 6930: declaring photo identification requirement statute unconstitutional – Opinion binding on State agencies.
- **Administrative regulations:** none

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- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Registration affidavit required, which must contain name, address, birthplace, date of birth, driver's license or state identification card number (if the voter has one), statement that the voter is a citizen of the U.S., statement that the voter is or will be eighteen, statement that the voter has lived or will have lived in the state for thirty days prior to the election. Mich. Comp. Laws Ann. § 168.495 (2005).
    - **At polls:**
      - Any voter who registered by mail and is voting for the first time must vote in person and must provide identification (essentially HAVA). Mich. Comp. Laws Ann. § 168.509t (2) (2005).
      - Otherwise, voters do not have to meet any identification requirement at the polls. Mich. Comp. Laws Ann. § 168.736 (2005).
    - **Invalid statute:**
      - In 1996, Michigan passed a law requiring official state identification card, driver's license, or other generally recognized picture identification card (which must include name and residence address) be shown prior to receiving a ballot; without such identification, the voter must execute an affidavit and vote a challenged ballot. Mich. Comp. Laws Ann. § 168.523 (2005).
      - However, immediately after its passage, the law's validity was challenged. The Attorney General declared that the law violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930.
      - The rationale for doing so was that voting is a fundamental right, and the law is not "necessary" to prevent voter fraud, even though preventing voter fraud is a "compelling" interest. *Id.* The Attorney General felt that the qualified voter file, criminal penalties for voting fraud, and required affidavits were sufficient to prevent voter fraud. *Id.* In Michigan, Attorney General Opinions are binding on all state agencies, and this opinion was never overruled by a court. Thus, it is binding on election officials. However, the provision is still in Michigan's Code and has not been repealed.
  - **First time voters or all?**
    - First time voters.
  - **When?**
    - Identification must be provided at registration or at polls – HAVA requirements.
  - **What types of ID?**
    - Same types listed in § 303 (b) of HAVA. Mich. Comp. Laws Ann. § 168.509t (2) (2005).  
Types allowed:
      - Driver's license with photo (any state); personal identification card with photo (any state); government issued photo identification

card; passport; student identification card with photo; credit or automated teller card with photo; military identification card with photo; employee identification with photo. Memorandum from Terry Lynn Land, Secretary of State (Oct. 13, 2004), [http://www.michigan.gov/documents/Fed\\_ID\\_Req\\_105890\\_7.pdf](http://www.michigan.gov/documents/Fed_ID_Req_105890_7.pdf).

- A paycheck or paycheck stub from any employer issued within the last year; a Social Security Administration check statement issued within the last year; government or military paycheck or paycheck stub issued within the last year; tax return check or check statement issued by the IRS or the State of Michigan within the last year; a gas, telephone, electric, water, cable or other utility bill issued within the last year; a statement from a bank or credit union dated within the last year; vehicle registration; Electronic Benefit Transaction (EBT) card; Department of Social Services (DSS) card; insurance card issued pursuant to a government administered or subsidized health insurance program such as Medicare or Medicaid; veteran's identification card; lease agreement provided under a public housing program or subsidized housing program; public housing identification card; tuition statement or bill from a public college or university; correspondence or a bill received from a federal, state or local government; discharge certificate, release papers, pardon, or other official document issued to the voter in connection with the resolution of a criminal case, indictment, sentence or other matter, in accordance with state law; discount card issued by a public transportation authority or a provider to senior citizens or persons with disabilities; marriage license. Memorandum from Terry Lynn Land, Secretary of State (Oct. 13, 2004), [http://www.michigan.gov/documents/Fed\\_ID\\_Req\\_105890\\_7.pdf](http://www.michigan.gov/documents/Fed_ID_Req_105890_7.pdf).
- **State or federal elections?**
  - Appears to be federal only since § 168.509t only requires identification "as required under section 303(b) of the help America vote act of 2002." Mich. Comp. Laws Ann. § 168.509t (2) (2005).
  - Also the Memorandum from the Secretary of State only refers to it as a "federal" requirement. Memorandum from Terry Lynn Land, Secretary of State (Oct. 13, 2004), [http://www.michigan.gov/documents/Fed\\_ID\\_Req\\_105890\\_7.pdf](http://www.michigan.gov/documents/Fed_ID_Req_105890_7.pdf).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Memorandum from Terry Lynn Land, Secretary of State (Oct. 13, 2004), [http://www.michigan.gov/documents/Fed\\_ID\\_Req\\_105890\\_7.pdf](http://www.michigan.gov/documents/Fed_ID_Req_105890_7.pdf).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Provide identification permitted under HAVA within six days after election.

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- **Challenge available at polls?**
  - Yes, and poll challengers permitted as well. Mich. Comp. Laws Ann. § 168.727 – 168.730 (2005).
- **Miscellaneous:**
  - Uses verification postcards, if returned by postal service, no registration. Mich. Comp. Laws Ann. § 168.500c (2005).
  - Already uses qualified voter file.

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Minnesota

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### Minnesota

#### Summary:

Minnesota requires identification prior to a voter being registered. Minn. Stat. § 201.061 (1) (2004). A mailed registration lacking identification or unique identifier (either social security number, state identification card number or driver's license number) is considered incomplete and does not register the voter. *Id.* Technically, Minnesota law requires a photo identification (driver's license, state identification card, passport, or student identification card) and if the address is not correct on that identification, another document with the voter's current address (tuition bill or utility bill). Minn. Stat. § 201.061 (3) (2004). Native Americans are permitted to show a tribal identification card with name, address and signature (requirement modified by law below). *Id.* As an alternative to formal identification, all registered voters are allowed to vouch for another voter's identity and residency and sign an affidavit to that effect. *Id.* These identification requirements only apply to new registrants and apply to all elections. Minnesota does not require any identification prior to voting; the voter must simply sign the register, attesting to his/her eligibility to vote. Minn. Stat. § 204C.10 (2004).

Minnesota just passed a new law regarding voter identification. 2005 Minn. Sess. Law Serv. Ch. 156, sec. 15, 45, § 201.061, § 204C.10 (West). The law allows employees of residential facilities (apartments, nursing homes, etc.), in addition to other voters, to vouch for the identity and address of residents of the facility and also limits the number of persons a voter (but not residential facility employees) may vouch for to fifteen. *Id.* The law also changes the affidavit used when a voter vouches for another voter and loosens the requirements for using a tribal identification card as identification. *Id.* It also changes the language of the affidavit the voter must sign prior to voting relating to felony disenfranchisement. *Id.*

Minnesota has many bills pending concerning voter identification requirements; however, many of the bills were considered settled in passing the recent voter identification law. Minnesota has considered a variety of changes to voter identification including requiring photo identification for all voters prior to voting as well as loosening the identification requirements for registration of new voters.

- **Statute:**
  - Minn. Stat. § 201.061 (2004).
  - Minn. Stat. § 204C.10 (2004).
  - **Passed:**
    - § 201.061 – At least since 1977.
    - § 204C.10 – 1981.
- **Session law:** 2005 Minn. Sess. Law Serv. Ch. 156, sec. 15, 45, § 201.061, § 204C.10 (West).
  - Bill: HF 1481, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(enacted).

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- § 204C.10: Changed language of affidavit voter must sign prior to voting concerning felony disenfranchisement – attesting that voter is not a felon.
- § 201.061: Changes provision concerning one voter vouching for another; allows an employee of a residential facility to vouch for a resident of the facility; limits the number of persons a voter may vouch for to fifteen; more specifics on content of affidavit vouching for a voter; tribal members using tribal identification card as identification not required to live on reservation.
- **Pending legislation:** bills considering adding a photo identification requirement for all voters and some bills considering loosening identification requirements for registration.
  - Both § 204C.10 & § 201.061
    - **HF 1443**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(requiring photo identification for all voters at polls & requiring proof of U.S. citizenship at registration) [House committee 3/3/05]
      - Companion Bill: SF 923
    - **SF 923**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(requiring photo identification for all voters at polls & requiring proof of U.S. citizenship at registration) [Senate committee 2/10/05]
      - Companion Bill: HF 1443
    - **SF 2266**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(adds utility bill, residential lease, bank statement, government check, paycheck, or other government document that shows the name and valid residential address of the voter to the list of valid forms of identification; loosens requirements for students – not requiring a photo ID with address ID; adds landlord to list of persons who can vouch for a voter; tribal members using tribal identification card as identification not required to live on reservation; changes language of felony disenfranchisement on voting affidavit) [first reading 4/26/05; second reading 4/27/05; amended 4/29/05; third reading & passed 4/29/05; HF 1481 substituted by motion 4/29/05]
      - HF 1481 substituted which was passed and signed into law.
    - **SF 1551**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(lengthening the time by which state agencies must forward voter registration applications to the secretary of state; adds utility bill, residential lease, bank statement, government check, paycheck, or other government document that shows the name and residential address of the voter to the list of valid identifications when presented in conjunction with a current photo identification and adds student lease (in conjunction with a photo identification) to list of valid identifications; adds landlord to list of persons who can vouch for a voter; changes language of felony disenfranchisement on voting affidavit) [Senate committee 3/10/05; referred to another committee 3/29/05; referred to another committee 4/7/05]
      - Absorbed into HF 1481, which was passed and signed into law.
      - Companion Bill: HF 2226
    - **HF 2342**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(eliminates requirement that tribal members using tribal identification card live on reservation; changes language of felony disenfranchisement on voting affidavit) [House committee 4/6/05]
      - Essentially accomplished through HF 1481
    - **SF 386**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005) (eliminates requirement that tribal members using tribal identification card live on reservation; changes language of

felony disenfranchisement on voting affidavit) [House committee 1/19/05; second reading 2/3/05; referred back to committee 2/3/05]

- Absorbed into HF 1481, which was passed and signed into law.

§ 204C.10 only

- **HF 1494**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(requires all voters to present picture ID, document issued by the State of Minnesota or US government, or tribal ID with name, address and date of birth prior to voting at polls– without identification, voter may execute affidavit and vote a regular ballot) [House committee 3/3/05]

201.061 only

- **HF 1785**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(eliminates requirement that tribal members using tribal identification card live on reservation) [House committee 3/14/05; second reading 4/11/05; referred back to committee 5/23/05]
  - Essentially accomplished through HF 1481
  - Companion Bill: SF 1692
- **HF 2226**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(lengthening the time by which state agencies must forward voter registration applications to the secretary of state; adds utility bill, residential lease, bank statement, government check, paycheck, or other government document that shows the name and residential address of the voter to the list of valid identifications when presented in conjunction with a current photo identification; adds student lease (in conjunction with a photo identification) to list of valid identifications) [House committee 3/30/05; second reading in House 4/18/05; referred back to committee 5/23/05]
  - Companion Bill: SF 1551
- **SF 852**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(adds current utility bill, residential lease, wireless telephone bill, bank statement, government check, paycheck, or other government document that shows the name and valid residential address of the voter to the list of acceptable identifications; loosens student identification requirements – not requiring an accompanying photo identification with address verification; eliminates requirement that tribal members using tribal identification card live on reservation) [first reading 2/10/05; referred to committee 2/10/05; second reading & returned to committee 3/29/05]
  - Absorbed into HF 1481, which was passed and signed into law.
  - Companion Bill: HF 975
- **HF 2099**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(limiting the number of voters that a person may vouch for to three) [House committee 3/23/05; second reading 4/7/05; referred back to committee 5/23/05]
- **HF 975**, 84<sup>th</sup> Legis. Sess., Reg. Sess. (Minn. 2005)(adds current utility bill, residential lease, wireless telephone bill, bank statement, government check, paycheck, or other government document that shows the name and valid residential address of the voter to the list of acceptable identifications; loosens student identification requirements – not requiring an accompanying photo identification with address verification; eliminates requirement that tribal members using tribal identification card live on reservation) [House committee 2/10/05]

- Companion Bill: SF 852
- **Case law (from annotations):**
  - *State v. Board of Educ. of City of Duluth*, 197 N.W. 964 (Minn. 1924): registration requirement as a prerequisite to voting is constitutional.
- **Administrative regulations:**
  - Minn. R. 8200.2900 (2004): deficient registration procedures – deficient registration is not a “challenged” voter, not registered.
  - Minn. R. 8200.3100 (2004): incomplete registrations – procedure for completing registration; notification.
  - Minn. R. 8200.3200 (2004): persons exempt from identification requirement – same as HAVA
  - Minn. R. 8200.5500 (2004): procedure & requirements for election day registration including identification requirements
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Minnesota modifies HAVA and requires a copy of identification be submitted with the mailed registration or driver’s license or social security number be provided on the registration form (which must be able to be verified against other state records). If not, the voter may:
        - Provide identification more than twenty days prior to the election to the county auditor
        - Register in person on election day
        - Provide proof of residence at the polls
        - Minn. Stat. § 201.061 (1) (2004).
    - **At polls:**
      - No, not unless for election day registration.
      - At polls, voter must only sign register, attesting to the fact that the voter is eligible to vote, and may be required to verify name, address, and date of birth. Minn. Stat. § 204C.10 (2004).
  - **First time voters or all?**
    - First time voters only – who did not provide either form of identification verification (DL or SS number or a copy of identification) with their mailed in registration. Minn. Stat. § 201.061 (2004).
  - **When?**
    - At registration technically because without identification the voter is not registered at all. Minn. Stat. § 201.061 (1a) (2004); Minn. R. 8200.2900 (2004).
  - **What types of ID?**
    - Driver’s license or Minnesota state identification card with current address (or bring utility bill with correct address together with driver’s license); passport with utility bill with current address; student identification card with current address; tuition bill in combination with photo identification card; affidavit by another registered voter vouching for the voter; tribal identification card with name, address and signature; and other identification forms approved by the Secretary of State. Minn. Stat. § 201.061 (3) (2004); Minnesota Secretary of

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State, Polling Place Posters (2004), <http://www.sos.state.mn.us/election/PollingPlacePosters.pdf>.

- **State or federal elections?**
  - Appears to apply to all elections, no distinction made in statute.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Voter is not registered. See Minn. Stat. § 201.061 (2004); Minn. R. 8200.2900 (2004).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Cannot vote, not registered. See Minn. Stat. § 201.061 (2004); Minn. R. 8200.2900 (2004).
- **Challenge available at polls?**
  - In a partisan election, each party gets one challenger at the polls; in a nonpartisan election, each candidate gets one challenger at the polls. Minn. Stat. § 204C.07 (2004).
- **Miscellaneous:**
  - Has postcard verification; if postcard returned, voter's status is changed to "challenged" and must comply with challenged voter rules. Minn. Stat. § 201.12 (2004).
  - Mail balloting permitted in municipal, county and state elections in small municipalities or unorganized portions of a county. Minn. Stat. § 240B.45 (1) (2004).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Mississippi

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### Mississippi

**Citation:**

I was not sure how to cite some of these documents, but they are all included with the Mississippi sources. [ID requirement poster & 3 Administrative Procedures titled – “Mississippi Guide to Elections – 2004”]

**Summary:**

Mississippi has no statutes in its Code concerning voter identification specifically. Prior to HAVA, Mississippi did not require any identification to register or vote. Since HAVA, Mississippi delegated the authority to promulgate rules complying with HAVA to the Secretary of State. Miss. Code Ann. § 23-15-169.5 (2004). By rule, Mississippi has taken the HAVA requirements and applied them to State and Federal elections. Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster). Essentially, the exact same rules apply, and the same forms of identification are acceptable. *Id.*; ID poster from Secretary of State – Elections website – [http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted\\_ID.jpg](http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted_ID.jpg). If a voter lacks identification at the polls and did not provide it with his/her registration, the voter may cast an “affidavit ballot,” which is very similar to a provisional ballot. Mississippi Guide to Elections – 2004, July 12, 2004; ID poster from Secretary of State – Elections website – [http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted\\_ID.jpg](http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted_ID.jpg).

At the polls, voters need only to state their name prior to voting, except for new registrants that did not provide identification with their registration. Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster).

Mississippi considered voter identification extensively in its last session, but ultimately, all bills introduced died in committee. Shelia Byrd, *Deadline Expires on Voter ID Bill – Changes in Marriage License Law Also Won't Be Made*, Memphis Commercial Appeal, March 2, 2005. This issue is expected to reemerge as a hot topic in the legislature's next session. *Id.*

- **Statute:**
  - None concerning voter ID specifically, but, prior to HAVA, Mississippi did not require any identification for registration or voting.
  - **Passed:** N/A
- **Session law:** none
- **Pending legislation:**
  - Several bills concerning voter identification, some requiring photo identification, were introduced in the 2005 Session but all died in committee because of the March 1, 2005 deadline for pending bills to either pass the other chamber or die in committee: HB 1045, SB 2067, SB 2634, SB 2910, HB 1421, HB 1045, HB 996,

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HB 434, SB 2123, HB 345, HB 361, HB 185. – However, many similar proposals are expected to reemerge in the next session.

- **Case law (from annotations):** none
- **Administrative regulations:** No formal administrative code in Mississippi but the Secretary of State has the power to promulgate rules and has promulgated a series of rules implementing HAVA. (three relevant ones enclosed)
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - Yes, but not beyond HAVA requirements except that it applies to all elections. Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster).
    - **At polls:**
      - Nothing beyond HAVA requirements for new registrants; all other voters must simply state their name. Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster).
  - **First time voters or all?**
    - First time voters/new registrants only. Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster).
  - **When?**
    - Same as HAVA – either at registration or at polls. Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster).
  - **What types of ID?**
    - Photo ID
    - Utility bill with name and address
    - Bank statement with name and address
    - Paycheck with name and address
    - Any other government document with name and address
    - Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster); ID poster from Secretary of State – Elections website - [http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted\\_ID.jpg](http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted_ID.jpg).
  - **State or federal elections?**
    - Both, Mississippi's Secretary of State has promulgated several rules implementing HAVA's requirements for all elections in Mississippi. Mississippi Guide to Elections – 2004, July 12, 2004; ID poster from Secretary of State – Elections website - [http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted\\_ID.jpg](http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted_ID.jpg).
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Voter may cast an "affidavit ballot," which is essentially the same thing as a provisional ballot. Mississippi Guide to Elections – 2004, July 12, 2004; ID poster from Secretary of State – Elections website – [http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted\\_ID.jpg](http://www.sos.state.ms.us/elections/2004/Handbook/FinalAccepted_ID.jpg).
      - Procedures for affidavit ballot – Miss. Code Ann. § 23-15-573 (2004).



- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Vote affidavit ballot which requires executing an affidavit including: name, address, telephone number, statement that the voter believes that he/she is registered to vote, and signature. The vote may or may not be counted depending on whether the voter's status can be determined after the election. Miss. Code Ann. § 23-15-573 (2004); Mississippi Guide to Elections – 2004, July 12, 2004 (State of Mississippi Voter Information poster).
- **Challenge available at polls?**
  - Yes, poll watchers, election judges, registered voters, and candidates may challenge voters at the polls. Miss. Code Ann. § 23-15-571 (2004).

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**MEMORANDUM**

**TO:** Sara Sampson  
**FROM:** Sarah Shive  
**DATE:** August 21, 2005  
**RE:** States for ID requirements chart: Missouri

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**Missouri**

**Summary:**

Missouri requires voters to present a copy of a birth certificate, a Native American tribal document, other proof of United States citizenship, a valid Missouri drivers license or other form of personal identification at the time of registering to vote. §115.135.2 R.S. Mo.

If registering by mail for the first time, voters are asked to send a copy of valid photo identification. §115.155.1 R.S. Mo. If voters do not submit one of these documents, they will be asked to present a copy of a birth certificate, a Native American tribal document, other proof of United States citizenship, a valid Missouri drivers license, or other personal identification when voting for the first time. *Id.*

Before receiving a ballot, a voter must present identification issued by Missouri, an agency of the state, or a local election authority in the state; identification issued by the U.S. government or an agency; identification issued by an institute of higher education located in Missouri; a copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; a driver's license or state identification card issued by another state; or other identification approved by the Secretary of State. §115.427.1 R.S. Mo. If two election judges, one from each party, personally know the voter and vouch for their identity, signing an affidavit, this may be substituted for other identification. *Id.*

A voter who has registered to vote by mail but does not present proper identification at the polls when voting in person for the first time may cast a provisional ballot. §115.159.2 R.S. Mo. A voter who has registered by mail but did not submit identification and has not voted in person and presented identification may not vote by absentee ballot. *Id.*

• **Statutes:**

○ **Passed:**

- **§115.135.2** – 1977; 1994 changed “no person shall be allowed to register unless he or she presents...identification” to “A person applying to register with an election authority or a deputy registration official shall present...identification.”
- **§115.155.1** – 1977; 2003 added language to the voter registration form asking the voter to submit a copy of valid photo identification or other personal identification, or a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows their name and address (the latter portion being later repealed) when registering by mail, or to be prepared to present identification when voting for the first time.
- **§115.159** – 1977; 2003 added permission for a voter who had registered by mail but had not presented proper identification to vote provisionally, and indicated that a voter who registered by mail may vote absentee for the first time if they submitted proper identification with their application to register.

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- **§115.427 – 1977**; indicates that before voting, a voter must present identification issued by Missouri, an agency of the state, or a local election authority in the state; identification issued by the U.S. government or an agency; identification issued by an institute of higher education located in Missouri; a copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; a driver’s license or state identification card issued by another state; or other identification approved by the Secretary of State. Additionally, two election judges, one from each party, may vouch for the identity of the voter if they know the voter personally.
- **Session law/recent legislation passed:**
  - **2005 Mo. HB 353**: adds to §115.135.2 the specific enumeration “a copy of a birth certificate, a Native American tribal document, other proof of United States citizenship” as acceptable forms of identification to show when registering to vote. [HB 353, signed by governor July 17, 2005]. Also deletes from the voter registration form outlined in §115.155.1 language allowing a voter to submit a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows their name and address when registering by mail in order to avoid being asked for identification when voting for the first time.
- **Pending legislation:**
  - **2005 Mo. H.B. 149/2005 Mo. H.B. 762**: proposes to change §115.159 to prohibit a voter who registered by mail from being given an advance (rather than absentee) ballot unless they have provided proper identification either in person or by mail. (Feb. 10, 2005/Mar. 31, 2005)
  - **2005 Mo. S.B. 472**: proposes to change §115.159 to prohibit a voter who registered by mail from being given an advance (rather than absentee) ballot unless they have provided proper identification either in person or by mail. (Mar. 2, 2005)
  - **2005 Mo. H.B. 66**: proposes to change §115.135 and §115.155 such that a voter would be required to present both a valid Missouri driver’s license or other form of personal identification and a copy of a birth certificate or other proof of United States citizenship when registering in person, or to submit both a copy of current, valid photo identification and a copy of a birth certificate or other proof of United States citizenship when registering by mail. (Jan. 6, 2005)
  - **2005 Mo. S.B. 50**: proposes to change §115.135 and §115.155 such that a voter would be required to present both a valid Missouri driver’s license or other form of personal identification and a copy of a birth certificate, Social Security card, or other proof of United States citizenship when registering in person, or to submit both a copy of current, valid photo identification and a copy of a birth certificate, Social Security card, or other proof of United States citizenship when registering by mail. (Mar. 8, 2005)
- **Case law (from annotations):**
  - none
- **Administrative regulations:**

- **15 CSR 30-3.010:** provides that personal knowledge of a voter by two election judges, one from each major political party, suffices as identification, if the election judges complete an affidavit attesting to the voter's identity.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - When registering in person, a copy of a birth certificate, a Native American tribal document, other proof of United States citizenship, a valid Missouri drivers license or other form of personal identification should be presented. A copy of valid photo identification should be submitted when registering by mail. Otherwise, the voter will be asked for a copy of a birth certificate, a Native American tribal document, other proof of United States citizenship, a valid Missouri drivers license, or other personal identification when voting for the first time.
    - **At polls:**
      - Before voting, voters must present identification issued by Missouri, an agency of the state, or a local election authority in the state; identification issued by the U.S. government or an agency; identification issued by an institute of higher education located in Missouri; a copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; a driver's license or state identification card issued by another state; or other identification approved by the Secretary of State. Two election judges, one from each party, may also vouch for the identity of the voter if they personally know them.
- **First time voters or all?**
  - All
  - **When?**
    - A copy of valid photo ID may be submitted when registering by mail. When registering in person, ID must be presented. ID must also be presented at the polls.
  - **What types of ID?**
    - When registering by mail: a copy of valid photo identification
    - When registering in person: a copy of a birth certificate, a Native American tribal document, other proof of United States citizenship, a valid Missouri drivers license or other form of personal identification
    - At the polls: a voter must present identification issued by Missouri, an agency of the state, or a local election authority in the state; identification issued by the U.S. government or an agency; identification issued by an institute of higher education located in Missouri; a copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter; a driver's license or state identification card issued by another state; or other identification approved

by the Secretary of State (personal knowledge of the voter by two election judges may also suffice).

- **State or federal elections?**
  - Both
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - A voter with no identification at the polling place may not vote.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - A voter with no identification at the polling place may not vote.
- **Challenge available at polls?**
  - No.

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Sarah Shive  
**DATE:** August 21, 2005  
**RE:** States for ID requirements chart: Montana

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### Montana

#### Summary:

Montana requires that before a voter may receive a ballot, they must present current photo identification showing their name, which may include a valid driver's license, a school photo identification card, or a tribal photo identification card. MCA §13-13-114(1)(a). If they do not provide current photo identification, they may provide instead a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address. *Id.* The identification need not perfectly match the information in the precinct register, as long as an election judge is able to the voter's identity and eligibility. MCA §13-13-114(1)(c). If the information provided is insufficient to verify the voter's identity and eligibility, or the voter's name does not appear in the precinct register, they may still vote provisionally. MCA §13-13-114(2). A voter who has voted provisionally may verify their eligibility to vote by providing a form of identification permitted by §13-13-114(1)(a) in person by 5 p.m. on the day after the election, by fax or email by 5 p.m. on the day after the election, or by mail postmarked either the day of the election or the day after the election. MCA §13-15-107.

When registering to vote by mail, a voter must enclose a copy of current and valid photo identification showing the individual's name, such as a valid driver's license, a school photo identification card, or a tribal photo identification card; or a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address. MCA §13-2-110(5)(b). When registering in person, a voter must present current and valid photo identification with the individual's name, such as valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification card; or a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address. MCA §13-2-110(5)(a).

- **Statutes:**
  - **Passed:**
    - §13-13-114 – 1979; 2003 changed the requirement that the voter state their name and address before signing the precinct register and voting to a requirement that the voter present identification of one of the types enumerated by the statute (photo identification, or a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the voter's name and current address).
    - §13-15-107 – 2003
    - §13-2-110 – 2003
- **Session law/recent legislation passed:**
  - None.

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- **Pending legislation:**
  - **2005 MT S.B. 234:** proposes that a voter whose name appears on the precinct register and is voting in person not be required to show identification, and that a voter whose name appears in the register as a provisionally registered voter receive a regular ballot if presenting either valid photo identification or a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address. (Mar. 1, 2005 – died in committee)
  - **2005 MT S.B. 367:** proposes to remove a driver's license from the enumerated list of acceptable forms of identification to present when registering to vote. Also proposes that if a voter's name does not appear in the precinct register, but the voter is in the correct precinct, or the voter's registration is outdated, that the voter must be permitted to register or to update their registration, and be provided with a regular ballot. (Feb. 4, 2005)
  - **2005 MT S.B. 302:** proposes to remove a driver's license from the enumerated list of acceptable forms of identification to present when registering to vote. (Apr. 18, 2005)
  - **2005 MT D. 375/2005 MT D. 458:** proposes that identification requirements may not be more stringent than those laid out in the Help America Vote Act of 2002. Also proposes to remove the identification requirements for registration in person, and to alter those required for registration by mail to require that a voter submit a copy of valid, current photo identification showing their name and current address, or if such identification does not exist, a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address. Also proposes to remove the identification requirements for voters voting in person, and to allow voters whose names appear in the precinct register as provisionally registered voters to vote by regular ballot if they present current photo identification showing their name and current address, or if the voter does not have such document, a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address. (Dec. 30, 2004/Jan. 10, 2005)
  - **2005 MT D. 1213:** proposes to provide for same-day registration to vote, and removes a driver's license from the enumerated list of acceptable forms of identification for a voter to present when registering to vote. (Jan. 31, 2005)
- **Case law (from annotations):**
  - None.
- **Administrative regulations:**
  - None.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - By mail: A voter must enclose a copy of current and valid photo identification showing the individual's name, such as a valid driver's license, a school photo identification card, or a tribal photo identification card; or a current utility bill, bank statement,

paycheck, government check, or other government document that shows the individual's name and current address.

- In person: A voter must present current and valid photo identification with the individual's name, such as valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification card; or a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.
- **At polls:**
  - Montana requires that before a voter may receive a ballot, they must present current photo identification showing their name, which may include a valid driver's license, a school photo identification card, or a tribal photo identification card. If they do not provide current photo identification, they may provide instead a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address.
- **First time voters or all?**
  - All
  - **When?**
    - When registering to vote, and at the polls before voting.
  - **What types of ID?**
    - When registering by mail: A voter must include a copy of current and valid photo identification with the individual's name, such as valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification card; or a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.
    - When registering in person: A voter must present current and valid photo identification with the individual's name, such as valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification card; or a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.
    - At the polls: Before a voter may receive a ballot, they must present current photo identification showing their name, which may include a valid driver's license, a school photo identification card, or a tribal photo identification card. If they do not provide current photo identification, they may provide instead a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address.
  - **State or federal elections?**

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- Both
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - A voter with no identification or insufficient identification at the polling place must vote provisionally.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - A voter who has voted provisionally may verify their eligibility to vote by providing a form of identification permitted by §13-13-114(1)(a) in person by 5 p.m. on the day after the election, by fax or email by 5 p.m. on the day after the election, or by mail postmarked either the day of the election or the day after the election.
- **Challenge available at polls?**
  - A challenger may challenge a voter's eligibility to vote at any time by filling out an affidavit stating the grounds of the challenge and any evidence supporting it and submitting the affidavit to the election administrator or, on election day, an election judge. §13-13-301(1) as amended by 2005 Mt. ALS 286.

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 7, 2005  
**RE:** 10 states for ID requirements chart: Nebraska

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### Nebraska

#### Summary:

Nebraska law requires that an applicant supply his/her name, address, phone number, date of birth, place of birth, and driver's license number or the last four digits of his/her social security number (if the applicant has either) in order to register to vote. Neb. Rev. Stat. § 32-312 (2004); 2005 Neb. Laws 566. Nebraska has also codified the HAVA identification requirements and applied them to State and Federal elections. Neb. Rev. Stat. § 32-319 (2004); Neb. Rev. Stat. § 32-914 (2004). Thus, new voters who registered by mail are required to present identification with their registration, prior to voting, or at the polls. *Id.* The forms of identification are the same forms acceptable under HAVA. *Id.* Without proper identification, these voters may vote a provisional ballot. Neb. Rev. Stat. § 32-915 (2004); 2005 Neb. Laws 566. At the polls, all other voters are only required to announce their name and address and sign their name in the record. Neb. Rev. Stat. § 32-913 (2004); Neb. Rev. Stat. § 32-914 (2004).

Nebraska recently passed two laws concerning elections. 2005 Neb. Laws 53; 2005 Neb. Laws 566. 2005 Neb. Laws 53 makes a change to the length of time felons are not permitted to vote. 2005 Neb. Laws 566 makes extensive changes to HAVA updates passed in 2003. It specifies what information is required on the registration form and that a registration may be rejected for failure to provide certain information. 2005 Neb. Laws 566. It also clarifies the identification requirements for new voters who registered by mail and includes a requirement that photo identification be valid and current and all other forms of identification be dated within the last sixty days. *Id.*

#### • Statute:

- Neb. Rev. Stat. § 32-312 (2004).
- Neb. Rev. Stat. § 32-319 (2004).
- Neb. Rev. Stat. § 32-914 (2004).
- Neb. Rev. Stat. § 32-915.02 (2004).
- **Passed:**
  - § 32-312 – 1994; 2003 driver's license or social security number added as a registration information requirement
  - § 32-319 – 2003
  - § 32-914 – 2003
  - § 32-915.02 – 2003

#### • Session law:

- 2005 Neb. Laws 53 (passed over governor's veto March 10, 2005): amending § 32-312 and lengthening time for felony disenfranchisement to two years after sentence is complete
- 2005 Neb. Laws 566 (signed into law May 31, 2005):
  - gives Secretary of State the power to promulgate rules and regulations

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- amending 32-319: rewords section regarding providing identification with registration
- amending 32-312: telephone number and place of birth no longer optional; adds a statement that an incomplete application may be rejected; adds a statement that failure to provide driver's license or social security number will not result in rejection; makes minor word & phrasing changes
- amending 32-318: new provision added mandating that the identification provided by mail in registrants must be dated within the last sixty days or, for photo identification, that it is current and valid; also adds that the identification may be shown at registration, after registration, or at the polls and by mail, fax, or in person
- amending 32-914: rewrote requirement on showing identification at polls
- repealing 32-915.02 but the relevant portion regarding provisional ballots for new voters who do not present identification was moved to § 32-915.
- **Pending legislation:** none
- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - State law requires that the applicant supply his/her name, address, driver's license number or the last four digits of his/her social security number (if the applicant has either), and date of birth in order to register. Neb. Rev. Stat. § 32-312 (2004).
        - Phone number & place of birth now no longer optional; incomplete application may be rejected (but not because driver's license or social security number omitted). 2005 Neb. Laws 566.
      - New registrants who register by mail are also instructed to provide a copy of a current photo identification, utility bill, bank statement, government check, paycheck, or other government document that is current and show the voter's name and address either at registration or at the polls. Neb. Rev. Stat. § 32-319 (2004).
    - **At polls:**
      - New mail in registrants – required to provide identification at the polls if they did not provide a copy with their registration. Neb. Rev. Stat. § 32-319 (2004); Neb. Rev. Stat. § 32-914 (2004).
      - All voters - Only required to announce their name and address and sign their name in record. Neb. Rev. Stat. § 32-913 (2004); Neb. Rev. Stat. § 32-914 (2004).
  - **First time voters or all?**
    - Identification requirements only for first time voters who register by mail – must provide identification either with their registration or at the polls. Neb. Rev. Stat. § 32-319 (2004); Neb. Rev. Stat. § 32-914 (2004).

- **When?**
  - Either at the polls or with registration. Neb. Rev. Stat. § 32-319 (2004); Neb. Rev. Stat. § 32-914 (2004).
- **What types of ID?**
  - Current photo identification OR
  - Utility bill, bank statement, government check, paycheck, or other government document that is current and shows the voter's name and address
  - Neb. Rev. Stat. § 32-319 (2004); Neb. Rev. Stat. § 32-914 (2004).
    - New provision added to § 32-318 by 2005 Neb. Laws 566 requiring photo identification be valid and current and all other forms of identification be dated within the last sixty days.
- **State or federal elections?**
  - All elections.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Neb. Rev. Stat. § 32-915.02 (2004).
    - § 32-915.02 repealed by 2005 Neb. Laws 566 but the relevant language was added to § 32-915.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - The voter must also fill out voter registration form and execute an affidavit that the voter is a registered voter. Neb. Rev. Stat. § 32-915.02 (2004).
    - § 32-915.02 repealed by 2005 Neb. Laws 566 but the relevant language was added to § 32-915.
- **Challenge available at polls?**
  - Yes, of any voter by an election judge, inspector, clerk, or registered voter. Neb. Rev. Stat. § 32-926 (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 21, 2005  
**RE:** States for ID requirements chart: Nevada

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### Nevada

#### **Summary:**

Nevada requires first time voters who register by mail to present identification either at registration or at the polls (identification forms are the same as under HAVA). Nev. Rev. Stat. 293.2725 (2005). Without proper identification, the voter may execute an affidavit and vote a provisional ballot for federal candidates only. Nev. Rev. Stat. 293.2725 (2005).

All other voters are only required to state their name and sign the poll register, which is compared to their registration card or one of a variety of forms of alternative signature comparison documents. However, if the signatures do not match, the voter must produce additional identification with a signature and a picture (types are specified by law). Nev. Rev. Stat. 293.277 (2005).

Nevada has recently passed two bills which allow voters who vote provisionally to vote for federal offices as well as state and local offices. Several bills were introduced this session concerning voter identification and registration.

Interestingly, Nevada has implemented a statewide touch screen voting system with voter verifiable paper audit trail, which Nevada boasts was a complete success in 2004. Nevada Secretary of State Homepage, at <http://sos.state.nv.us/publications/hava.htm>.

- **Statutes:** Nev. Rev. Stat. 293.2725 (2005); Nev. Rev. Stat. 293.285 (2005); Nev. Rev. Stat. 293.277 (2005).
  - **Passed:**
    - 293.2725 – 2003
    - 293.285 – 1960
    - 293.277 – at least since 1991; possibly since 1960.
- **Session law/recent legislation passed:**
  - 2005 Nev. Stat. 500, sec. 9, 10, 293.3081, 293.3082: allowing voters who vote provisionally to vote for State and Federal issues and candidates
    - Bill: AB 500, 73<sup>rd</sup> Leg. Sess., Reg. Sess. (Nev. 2005) [approved by governor June 17, 2005]
  - 2005 Nev. Stat. 455, sec. 23, 24, 293.3081, 293.3082: allowing voters who vote provisionally to vote for State and Federal issues and candidates
    - Bill: AB 455, 73<sup>rd</sup> Leg. Sess., Reg. Sess. (Nev. 2005) [approved by governor June 13, 2005, effective October 1]
- **Pending legislation:**
  - AB 269, 73<sup>rd</sup> Leg. Sess., Reg. Sess. (Nev. 2005): Require all voters to present either a current and valid photo identification or a copy of a current utility bill, bank statement, paycheck or document issued by a governmental entity prior to voting; changes 293.277 to require signature verification, identification document,

and name in election register in order for a voter to be permitted to vote. [3/21/05 - Introduced; 4/16/05 - No further action allowed]

- SB 478, 73<sup>rd</sup> Leg. Sess., Reg. Sess. (Nev. 2005): Substitutes “current utility bill, bank statement, paycheck, or document issued by a governmental entity, including, without limitation, a check, which indicates the name and address of the person” for “sufficient proof of residence and identity” in 293.2725 (HAVA compliant statute); limits alternative signature verification document (when voter registration card unavailable) to only a valid photo identification card in 293.277. [3/29/05 – introduced; 4/27/05 no further action allowed]
- AB 499, 73<sup>rd</sup> Leg. Sess., Reg. Sess. (Nev. 2005): adds school identification card to list of alternative signature verification documents; allows a voter to show identification instead of signature comparison to prove identity in 293.277 [3/28/05 introduced; 5/23/05 passed out of committee; 6/3/05 referred to another committee; 6/6/05 passed out of committee]
- SB 386, 73<sup>rd</sup> Leg. Sess., Reg. Sess. (Nev. 2005): allowing appointed poll challengers; modernizing the election code to accommodate modern methods of voting and running polls and registration; removing references to punch ballots [conference committee 6/3/05]
- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **HAVA:** First time voters who registered by mail must have identification (either with registration or at polls). Nev. Rev. Stat. 293.2725 (2005).
      - Alternative: Provide social security number or state identification number on registration form, and voter’s name and date of birth match with an existing state record. Nev. Rev. Stat. 293.2725 (2)(b) (2005).
    - **All other voters:** At polls, all voters must state their names and then sign in register. Their signatures are compared to either voter registration cards or a variety of identification documents with a signature. Nev. Rev. Stat. 293.277 (1) (2005); Nev. Rev. Stat. 293.285 (1) (2005).
      - If signatures do not match, the voter must produce additional identification: voter registration card, driver’s license, state identification card, military identification card, or any other form of identification issued by a government agency with signature and picture. Nev. Rev. Stat. 293.277 (2005).
  - **First time voters or all?**
    - First time voters only for the identification requirement. Nev. Rev. Stat. 293.2725 (2005).
    - Signature verification applies to all voters. Nev. Rev. Stat. 293.277 (2005).
  - **When?**
    - HAVA requirement: Either at registration or at polls. Nev. Rev. Stat. 293.2725 (2)(a) (2005).



- **What types of ID?**
  - HAVA requirement: Photo identification, utility bill, bank statement, paycheck, or government issued document (must contain name and address). Nev. Rev. Stat. 293.2725 (1)(a) (2005).
- **State or federal elections?**
  - Both. Except that without identification, a first time voter who registered by mail is only allowed to vote provisionally for federal candidates, not state or local candidates. Nev. Rev. Stat. 293.3082 (2005).
    - RECENT CHANGE: 2005 Nev. Stat. 500, sec. 9, 10, 293.3081, 293.3082 & 2005 Nev. Stat. 455, sec. 23, 24, 293.3081, 293.3082: voters voting provisionally may vote for state and federal candidates and issues.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Nev. Rev. Stat. 293.3081 (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit & can vote provisionally. Nev. Rev. Stat. 293.3082 (2005).
- **Challenge available at polls?**
  - Yes, by any registered voter. Nev. Rev. Stat. 293.303 (2005).
- **Miscellaneous:**
  - Uses touch screen voting with voter verifiable paper audit trail
  - Has vote by mail for precincts with less than 200 registered voters. Nev. Rev. Stat. 293.343 (2005).
  - Allows early voting. Nev. Rev. Stat. 293.356 (2005).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 22, 2005  
**RE:** States for ID requirements chart: New Hampshire

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### New Hampshire

#### Summary:

New Hampshire, like a few other states with election day registration, was exempted from the NVRA and from the provisional balloting requirement of HAVA. New Hampshire Secretary of State, 2005 State Plan Draft, 16 (2005), <http://www.sos.nh.gov/HAVA/State%20Plan%202005-06-02.pdf>. Consequently, New Hampshire requires in person registration for all voters who do not qualify for an absentee ballot. *Id.* This can be done either prior to the election or on election day, but it must be done in person. *Id.* Registration requires proof of citizenship, proof of age, and proof of domicile. N.H. Rev. Stat. Ann. § 654:12 (2005). Proof of age requires documentation proving the requirement, but citizenship and domicile may be proven through affidavit (but executing the affidavit requires proof of identity).

The identification requirements of HAVA are not really much of an issue in New Hampshire, as only absentee voters are permitted to register by mail.

At the polls, voters are only required to announce their name prior to receiving a ballot, but in order to register on election day they must prove citizenship, domicile, and age. N.H. Rev. Stat. Ann. § 659:13 (2005); N.H. Rev. Stat. Ann. § 654:12 (2005). An election day registrant is not permitted to register and consequently vote without proof of citizenship, age, and domicile (no provisional balloting). New Hampshire Secretary of State, 2005 State Plan Draft, 14 (2005), <http://www.sos.nh.gov/HAVA/State%20Plan%202005-06-02.pdf>.

There are several bills pending concerning election day registration, photo identification at the polls, and identification at registration. All remain in committee currently.

- **Statutes:** N.H. Rev. Stat. Ann. § 654:12 (2005); N.H. Rev. Stat. Ann. § 659:13 (2005)
  - **Passed:**
    - § 654:12 – 1979
    - § 659:13 – 1979
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - HB 639, 159<sup>th</sup> Sess. (N.H. 2005): eliminating election day registration and enacting provisions of NVRA [1/26/05 introduced; 3/23/05 retained in committee]
  - HB 501, 159<sup>th</sup> Sess. (N.H. 2005) & HB 345, 159<sup>th</sup> Sess. (N.H. 2005): AT POLLS - requiring photo identification for all voters; AT REGISTRATION - changing forms of identification for proof of domicile to: NH state identification card, NH driver's license, NH vehicle registration, passport, military identification, or other photo identification; AT REGISTRATION - adds proof of identity to

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requirements – by photo identification only [Both bills - 1/26/05 introduced; 3/16/05 retained in committee]

- HB 347, 159<sup>th</sup> Sess. (N.H. 2005): requiring proof of citizenship of all voters at the polls - birth certificate, passport, naturalization papers, citizenship affidavit, or any other reasonable documentation which indicates the applicant is a citizen. [1/26/05 introduced; 3/16/05 retained in committee]
- HB 345, 159<sup>th</sup> Sess. (N.H. 2005): requiring photo identification of all voters prior to voting (photo driver's license, passport, military identification, or other government issued photo identification). [1/26/05 introduced; 3/16/05 retained in committee]
- SB 26, 159<sup>th</sup> Sess. (N.H. 2005): requiring photo identification prior to voting. [1/5/05 introduced; 4/7/05 recommitted to committee]
- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration/all voters:** Requires in person registration with city clerk or the Supervisors of the Checklist. Registration can occur on election day. Also requires proof of citizenship, age, and domicile (also proof of identity required if any of those three are to be proven by affidavit). N.H. Rev. Stat. Ann. § 654:12 (2005).
      - Proof of citizenship: birth certificate, passport, naturalization papers, notarized citizenship affidavit, or any other document indicating the voter is a U.S. citizen
      - Proof of age: any reasonable document indicating the applicant is eighteen years old or older
      - Proof of domicile: any reasonable document indicating the applicant has a domicile and intends to maintain a domicile there or a notarized domicile affidavit
        - Documents acceptable for domicile proof: NH driver's license, NH vehicle registration, or photo identification issued by US government
      - Proof of identity (needed to execute affidavit to prove citizenship or domicile): driver's license issued by any state, passport, or government issued photo identification
    - **At polls/all registered voters:** Announce name only. N.H. Rev. Stat. Ann. § 659:13 (2005).
    - **HAVA:** voters are only permitted to register by mail in New Hampshire if they qualify for an absentee ballot, but that procedure complies with HAVA and requires identification. New Hampshire Secretary of State, 2005 State Plan Draft, 16 (2005), <http://www.sos.nh.gov/HAVA/State%20Plan%202005-06-02.pdf>.
  - **First time voters registering by mail or all?**
    - Requirements apply to all voters; obviously the registration requirements apply only to new voters. N.H. Rev. Stat. Ann. § 654:12 (2005); N.H. Rev. Stat. Ann. § 659:13 (2005).

- **When?**
  - At registration. N.H. Rev. Stat. Ann. § 654:12 (2005).
- **What types of ID?**
  - Proof of citizenship: birth certificate, passport, naturalization papers, notarized citizenship affidavit, or any other document indicating the voter is a U.S. citizen
  - Proof of age: any reasonable document indicating the applicant is 18 years old or older
  - Proof of domicile: any reasonable document indicating the applicant has a domicile and intends to maintain a domicile there or a notarized domicile affidavit
    - Documents acceptable for domicile proof: NH driver's license, NH vehicle registration, or photo identification issued by US government
  - Proof of identity (needed to execute affidavit to prove citizenship or domicile): driver's license issued by any state, passport, or government issued photo identification
  - N.H. Rev. Stat. Ann. § 654:12 (2005).
- **State or federal elections?**
  - All elections.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Cannot vote/not registered – no provisional voting system. New Hampshire is exempt from provisional voting requirement of HAVA because it has election day registration. Voter must prove citizenship, age and domicile prior to registration and voting (but that can be done by affidavit). New Hampshire Secretary of State, 2005 State Plan Draft, 14 (2005), <http://www.sos.nh.gov/HAVA/State%20Plan%202005-06-02.pdf>.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - See above.
- **Challenge available at polls?**
  - Yes, any voter may challenge. N.H. Rev. Stat. Ann. § 659:27 (2005).
- **Miscellaneous:**
  - Has election day registration with same identification requirements as regular registration. Requires in person registration. N.H. Rev. Stat. Ann. § 654:7-a, 7b (2005).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 22, 2005  
**RE:** States for ID requirements chart: New Jersey

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### New Jersey

#### Summary:

New Jersey does not require any identification beyond HAVA for new registrants registering by mail; instead, New Jersey merely applies HAVA's requirements to all elections. N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-5 (2005); N.J. Stat. Ann. § 19:31-6.4 (2005). The acceptable forms of identification are the same as under HAVA. *Id.* The applicant may present the identification either at the polls or with his/her registration. *Id.* Without identification, a new voter may vote a provisional ballot, but the vote will not be counted if the voter does not produce identification to election officials within two days of the election. N.J. Stat. Ann. § 19:53C-3 (2005).

At the polls, there is no identification requirement for all voters, but signature comparison is done. N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-21 (2005).

There are several voter identification-related bills pending in the legislature. A couple of these bills have passed one chamber and are awaiting a vote in the other. Two of these proposals would require identification at the polls. SB 2462, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005).

- **Statutes:** N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-5 (2005); N.J. Stat. Ann. § 19:31-6.4 (2005).
  - **Passed:**
    1. § 19:15-17 – 2004
    2. § 19:31-5 – 2004
    3. § 19:31-6.4 – 2004
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - SB 2462, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): requires personal identification to vote (identification types not specified) [5/5/05 introduced, referred to committee]
  - A 3404: issue electronic voter ID cards to voters which must be brought to polls [10/18/04 introduced, referred to committee]
  - AB 42, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): Permits voter registration up to twenty-one days before election; permits use of provisional ballot as voter registration; modifies information available on voter registration list [3/7/05 introduced; 6/20/05 passed Assembly; 6/20/05 second reading in Senate]
    4. Companion Bill – SB 2387, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): Permits voter registration up to 21 days before election; permits use of provisional ballot as voter registration; modifies information available on voter registration list [3/14/05 introduced; 6/20/05 amended on floor]
  - AB 39, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): increasing criminal penalties [3/7/05 introduced; 6/20/05 passed Assembly; 6/20/05 second reading in Senate]

- 5. Companion Bill – SB 2393, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): increasing criminal penalties [3/14/05 introduced; 6/20/05 substituted by AB 39]
  - AB 38, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): adds political party affiliation to registration form [3/7/05 introduced; 6/20/05 passed Assembly; 6/20/05 second reading in Senate]
    - 6. Companion Bill – SB 2394, 211<sup>th</sup> Assem., 2<sup>nd</sup> Ann. Sess. (N.J. 2005): adds political party affiliation to registration form [3/14/05 introduced; 6/9/05 second reading in Senate]
  - AB 2413, 211<sup>th</sup> Assem., 1<sup>st</sup> Ann. Sess. (N.J. 2005): implements portions of HAVA [2/24/05 introduced, referred to committee]
  - AB 1612, 211<sup>th</sup> Assem., 1<sup>st</sup> Ann. Sess. (N.J. 2005): Permits person registering to vote to declare political affiliation on voter registration form [1/13/04 introduced, referred to committee]
- **Case law (from annotations):** none
- **Administrative regulations:** none as such, but there could be informal ones not on Attorney General's website (Chief Election Official).
- **What the law requires:**
  - **Is ID required?**
    - 7. **For registration:**
      - The voter must provide identification with his registration, his social security number or his driver's license number on his registration form or else the voter will be required to show identification at the polls prior to voting. N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-5 (2005); N.J. Stat. Ann. § 19:31-6.4 (2005).
    - 8. **At polls:**
      - Signature comparison only. N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-21 (2005).
  - **First time voters or all?**
    - 9. First time voters who register by mail. N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-5 (2005); N.J. Stat. Ann. § 19:31-6.4 (2005).
  - **When?**
    - 10. Either at registration or at the polls. (HAVA). N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-5 (2005); N.J. Stat. Ann. § 19:31-6.4 (2005).
  - **What types of ID?**
    - 11. (1) A current and valid photo identification card.
    - 12. (2) A current utility bill, bank statement, government check, or paycheck.
    - 13. (3) Any other government document that shows the voter's name and current address.
    - 14. (4) Other documents deemed acceptable by the Attorney General.
    - 15. N.J. Stat. Ann. § 19:15-17 (2005); N.J. Stat. Ann. § 19:31-5 (2005); N.J. Stat. Ann. § 19:31-6.4 (2005).
  - **State or federal elections?**
    - 16. Both. N.J. Stat. Ann. § 19:31-6.4 (2005).



- **Consequences of having no ID (provisional ballot v. regular ballot?)**  
*17. Provisional ballot. N.J. Stat. Ann. § 19:15-17 (2005).*
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**  
*18. Voter has two days after election to produce identification or else vote does not count. N.J. Stat. Ann. § 19:53C-3 (2005).*
- **Challenge available at polls?**  
*19. Yes, candidates, the election board, and political parties may appoint poll challengers who can challenge voters at the polls. N.J. Stat. Ann. § 19:15-18 (2005).*

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Sarah Shive  
**DATE:** August 21, 2005  
**RE:** States for ID requirements chart: New Mexico

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### New Mexico

#### Summary:

New Mexico requires that when registering for the first time in New Mexico via mail, a voter must either submit a copy of current, valid photo identification, or a utility bill, bank statement, government check, paycheck, student identification card or other government document (including tribal identification) that shows the name and address of the applicant. N.M. Stat. Ann. §1-4-5.1(I)(4)(a). If the voter does not submit identification when registering, they will be required to present it when voting in person or absentee. N.M. Stat. Ann. §1-4-5.1(I)(4)(b).

At the polls, a voter must present identification, which may include current, valid photo identification, or a utility bill, bank statement, government check, paycheck, student identification card or other government document (including tribal identification) that shows the name and address of the applicant. N.M. Stat. Ann §1-12-7.1(D). Alternatively, the voter may supply a verbal or written statement by the voter of the voter's name, year of birth and unique identifier, with no need to include their middle initial or suffix. N.M. Stat. Ann. §1-1-5.4(B). If a voter cannot provide such identification, they must vote provisionally, and provide the required voter identification to the county clerk's office before the county canvass begins, or to the precinct board before the polls close, for their vote to be counted. N.M. Stat. Ann. §1-12-7.1(D). If lines to vote exceed 45 minutes, however, any physical identification requirements not required by federal law may be suspended, and a voter may simply state their name, year of birth, and unique identifier. N.M. Stat. Ann. §1-12-10.2. If a voter cannot state their name, year of birth, and unique identifier, however, physical identification is still required, and it may also be required at the request of two or more precinct board members of different parties. *Id.*

- **Statutes:**
  - **Passed:**
    - §1-1-5.4 – 2005
    - §1-4-5.1 – 1978; 2005
    - §1-12-7.1 – 1953; 2005
    - §1-12-10.2 – 2005
- **Session law/recent legislation passed:**
  - None.
- **Pending legislation:**
  - **2005 NM H.B. 18:** proposes that all voters registering by mail must submit the required identification when voting in person or absentee. Also specifically enumerates tribal identification as an acceptable form of identification. (Jan. 19, 2005)

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- **2005 NM S.B. 680:** proposes that a voter identification card or tribal identification be added as acceptable identification for submission when registering to vote by mail. (Mar. 2, 2005)
- **Case law (from annotations):**
  - None.
- **Administrative regulations:**
  - None.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - By mail: When registering for the first time in New Mexico via mail, a voter must submit either a copy of current, valid photo identification, or a utility bill, bank statement, government check, paycheck, student identification card or other government document (including tribal identification) that shows the name and address of the applicant. If the voter does not submit such identification, they will be required to provide identification at the polls.
      - At polls: A voter must present identification, which may include current, valid photo identification, or a utility bill, bank statement, government check, paycheck, student identification card or other government document (including tribal identification) that shows the name and address of the applicant. Alternatively, the voter may state their name, year of birth and unique identifier, with no need to include their middle initial or suffix.
  - **First time voters or all?**
    - All
  - **When?**
    - When registering to vote by mail, and at the polls before voting.
  - **What types of ID?**
    - When registering by mail: A voter must submit a copy of current, valid photo identification, or a utility bill, bank statement, government check, paycheck, student identification card or other government document (including tribal identification) that shows the name and address of the applicant.
    - At the polls: Before a voter may receive a ballot, they must present current photo identification showing their name, which may include a valid driver's license, a school photo identification card, or a tribal photo identification card. If they do not provide current photo identification, they may provide instead a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address.
  - **State or federal elections?**
    - Both

- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - A voter with no identification or insufficient identification at the polling place must vote provisionally.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - If a voter cannot provide identification, they must vote provisionally, and provide the required voter identification to the county clerk's office before the county canvass begins, or to the precinct board before the polls close, for their vote to be counted.
- **Challenge available at polls?**  
Yes, under N.M. Stat. Ann. § 3-8-43.

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 23, 2005  
**RE:** States for ID requirements chart: New York

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### New York

#### Summary:

New York does not require any identification beyond the HAVA requirements. N.Y. Elec. Law § 8-303 (2005). A new voter must either include his driver's license or social security number on his registration or provide identification at the polls or with his registration. *Id.* The types of identification permitted are the same as permitted under HAVA. *Id.* This requirement applies to state and federal elections. *Id.* Without identification, a first time voter who registered by mail may sign an affidavit and vote an affidavit ballot. *Id.* At the polls, all other voters must merely announce their name and address and sign the poll record. N.Y. Elec. Law § 8-302 (2005); N.Y. Elec. Law § 8-304 (2005).

Recently, a law was passed providing for the creation of a statewide voter registration list. 2005 N.Y. Laws Ch. 24. In addition, two relevant bills are pending. One provides that an affidavit ballot is also a valid application to register to vote. S. 2029, 228<sup>th</sup> Ann. Legis. Sess. (N.Y. 2005). The other implements HAVA identification provisions and other HAVA requirements. A. 121, 228<sup>th</sup> Ann. Legis. Sess. (N.Y. 2005).

- **Statutes:** N.Y. Elec. Law § 8-303 (2005).
  - **Passed:**
    - § 8-303 – 2004 [expires & is repealed July 1, 2005]
- **Session law/recent legislation passed:**
  - 2005 N.Y. Laws Ch. 24, sec. 1,2: creates a statewide voter registration list
    - Bills enacted: S. 3604, 228<sup>th</sup> Ann. Legis. Sess. (N.Y. 2005) (enacted) & A. 6733, 228<sup>th</sup> Ann. Legis. Sess. (N.Y. 2005) (enacted)
    - Passed May 3, 2005
- **Pending legislation:**
  - S. 2029, 228<sup>th</sup> Ann. Legis. Sess. (N.Y. 2005): Provides that an affidavit ballot submitted on election day at a polling place shall also constitute an application to register to vote. [2/8/05 introduced, referred to committee]
  - A. 121, 228<sup>th</sup> Ann. Legis. Sess. (N.Y. 2005): adds a new section implementing HAVA identification provisions; defines (broadly) the forms of identification which satisfy HAVA; adds identification requirement to registration form; implements statewide registration list; provides that an affidavit ballot is an application to register to vote; sets up system for affidavit ballot voters to ascertain if their ballot was counted [1/6/05 introduced; 1/25/05 passed Assembly; 1/25/05 referred to committee in Senate]
- **Case law (from annotations):**
  - **Gross v. Albany County Bd. of Elections**, 781 N.Y.S.2d 172 (N.Y. App. Div. 3 Dept. 2004): Affidavit on ballot signed by the voter, acknowledging that any false statement was punishable according to law, complied with requirements of law

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setting forth requirements for allowing voter to vote despite lack of registration poll record, despite failure of election inspector to witness voter's signature.

- ***Marraccini v. Balancia*, 582 N.Y.S.2d 232 (N.Y. App. Div. 2 Dept. 1992):** Affidavit ballots cast in general election for office of town mayor were invalid and should not have been counted, insofar as voters did not attempt to vote in election district for their address or were not registered on date of election.
- ***McClure v. D'Apice*, 497 N.Y.S.2d 770 (N.Y. App. Div. 2 Dept. 1986):** Vote of affidavit voter, who did not properly complete address portion of affidavit as required under Election Law § 8-302, subd. 3(f)(ii), would not be counted.
- ***Conroy v. Levine*, 479 N.Y.2d 187 (N.Y. App. Div. 2 Dept. 1984):** New election, after the fact, for village trusteeships was not warranted where there has been no showing of fraud or misconduct on the part of the inspectors of election or that any ineligible voter actually voted, and where the ten voters who were denied the opportunity to vote because no registration poll record could be found for them failed to avail themselves of the remedy of obtaining a court order on election day, when Justices of the Supreme Court were available for such purposes.
- ***People ex. rel. Borgia v. Doe*, 96 N.Y.S. 389 (N.Y. App. Div. 1 Dept. 1905):** The fact that some other person had voted on a registered elector's name did not deprive the elector of the right to insist that he be given a ballot and be permitted to vote, on complying with the requirements of the former Election Law of 1896.
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration/polls for new registrants:**
      - Same as HAVA – must have identification at registration or at polls or have included their driver's license number or social security number on registration form. N.Y. Elec. Law § 8-303 (2005).
    - **At polls/other voters:**
      - Announce name and address and sign poll record. N.Y. Elec. Law § 8-302 (2005); N.Y. Elec. Law § 8-304 (2005).
  - **First time voters or all?**
    - First time voters only. N.Y. Elec. Law § 8-303 (2005).
  - **When?**
    - Either at registration or at polls. N.Y. Elec. Law § 8-303 (2005).
  - **What types of ID?**
    - Current and valid photo identification
    - OR
    - Current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter
    - N.Y. Elec. Law § 8-303 (2005).
  - **State or federal elections?**
    - Both. Statute implementing HAVA does not make any distinction. N.Y. Elec. Law § 8-303 (2005). Also, voter registration form does not have any limitation on identification requirement limiting it to federal elections only. Voter registration form, at <http://www.elections.state.ny.us/download/voting/voteform.pdf>.

- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Affidavit ballot. N.Y. Elec. Law § 8-303 (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit. N.Y. Elec. Law § 8-303 (2005).
- **Challenge available at polls?**
  - Yes, a voter may be challenged at the polls by any inspector, clerk, appointed watcher, or registered voter. N.Y. Elec. Law § 8-502 (2005).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 27, 2005  
**RE:** States for ID requirements chart: North Carolina

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### North Carolina

#### Summary:

Presently, North Carolina does not require identification beyond HAVA. N.C. Gen. Stat. § 163-166.12 (2005). A voter who registered by mail and is voting for the first time must present identification at the polls. *Id.* A voter is exempt if he or she provided identification with his/her registration or provided the last four digits of his/her social security number or driver's license number on the registration form. *Id.* The forms of acceptable identification are the same as permissible under HAVA. *Id.* Without identification, these voters may execute an affidavit and vote a provisional ballot. N.C. Gen. Stat. § 163-166.12 (c) (2005); N.C. Gen. Stat. § 163-166.11 (2005). Other voters must merely state their name and current address prior to voting. N.C. Gen. Stat. § 163-166.7 (2005).

North Carolina recently passed a bill making it clear that new laws enacted to implement HAVA were intended to apply broadly to state and federal elections alike. 2005 N.C. Sess. Laws 2005-2. There are also two bills pending which concern voter identification. One would require all voters at the polls to provide a current photo identification *and* a copy of a utility bill, bank statement, government check, paycheck, or other government document with the voter's name and current address. H794, 2005-2006 Sess. (N.C. 2005). The other would require identification (of the same types permissible under HAVA) of all voters at the polls. H1446, 2005-2006 Sess. (N.C. 2005).

- **Statutes:** N.C. Gen. Stat. § 163-166.12 (2005).
  - **Passed:** 2003
- **Session law/recent legislation passed:**
  - 2005 N.C. Sess. Laws 2005-2: HAVA compliant laws/system in North Carolina should be broadly construed to apply to state and federal elections. [3/2/05 signed by governor]
- **Pending legislation:**
  - H794, 2005-2006 Sess. (N.C. 2005): requires all voters to provide at the polls a current and valid photo identification *and* a copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document. [3/17/05 introduced and referred to committee]
  - H1446, 2005-2006 Sess. (N.C. 2005): requires identification (same types as HAVA) of all voters in all elections. [4/21/05 introduced and referred to committee]
- **Case law (from annotations):** none
- **Administrative regulations:** none

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- **What the law requires:**
  - **Is ID required?**
    - **HAVA / at registration or at polls:**
      - Must present identification either at polls or at registration or provide the last four digits of his/her social security number or driver's license number on registration form. N.C. Gen. Stat. § 163-166.12 (2005).
    - **All voters at polls:**
      - State name and current residence address. N.C. Gen. Stat. § 163-166.7 (2005).
  - **First time voters or all?**
    - First time voters who registered by mail only. N.C. Gen. Stat. § 163-166.12 (a) (2005).
  - **When?**
    - Either at registration or at polls. N.C. Gen. Stat. § 163-166.12 (2005).
  - **What types of ID?**
    - Current and valid photo identification.
    - OR
    - A current utility bill, bank statement, government check, paycheck, or other government document.
    - N.C. Gen. Stat. § 163-166.12 (a) (2005).
  - **State or federal elections?**
    - Both. Legislature confirmed in 2005 that the enactments implementing HAVA were intended to make the rules the same for state and federal elections. 2005 N.C. Sess. Laws 2005-2.
      - Also voter registration form contains notice of identification requirement with no distinction between federal and state elections.
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - May vote provisionally. N.C. Gen. Stat. § 163-166.12 (c) (2005).
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - Affidavit. N.C. Gen. Stat. § 163-166.11 (2005).
  - **Challenge available at polls?**
    - Yes, by any registered voter. N.C. Gen. Stat. § 163-87 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 28, 2005  
**RE:** States for ID requirements chart: North Dakota

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### North Dakota

#### Summary:

North Dakota's election laws are unique in that North Dakota does not require registration. Consequently, it is exempt from HAVA's identification and provisional voting provisions and also from the NVRA. North Dakota requires identification of all voters at the polls. In March of 2005, the legislature modified the voter identification requirements for voters at the polls. 2005 N.D. Laws 183, sec. 1, § 16.1-05-07. Previously, voters were required to show identification with their birth date and picture prior to voting. N.D. Cent. Code § 16.1-05-07 (2005). The new bill requires identification with the voter's address and date of birth. 2005 N.D. Laws 183, sec. 1, § 16.1-05-07. The Secretary of State has yet to advise voters on what identifications fulfill this new requirement. However, both the newer and earlier version of this statute permit a voter who is known to election officials to recite his date of birth and have the official vouch for his identity. N.D. Cent. Code § 16.1-05-07 (2005); 2005 N.D. Laws 183, sec. 1, § 16.1-05-07.

Without identification and without an election official to vouch for the voter, a voter will likely be challenged. N.D. Cent. Code § 16.1-05-07 (2005); N.D. Cent. Code § 16.1-05-06 (2005); *see also* Alvin Jaeger, Secretary of State, 2004 Election Officials' Manual (2004), <http://www.state.nd.us/sec/forms/pdf/election-offic-manual.pdf>. The voter may then execute an affidavit and vote a regular ballot. N.D. Cent. Code § 16.1-05-06 (2005).

There is a bill pending in the House which would eliminate the identification requirement entirely for voters that election officials personally know. HB 1405, 59<sup>th</sup> Legis. Assem. (2005).

- **Statutes:** N.D. Cent. Code § 16.1-05-07 (2005).
  - **Passed:**
    - 2003
- **Session law/recent legislation passed:**
  - 2005 N.D. Laws 183, sec. 1, § 16.1-05-07: amended § 16.1-05-07 to require identification containing address and date of birth rather than picture identification. [3/23/05 signed by governor]
    - Bill: HB 1254
- **Pending legislation:**
  - HB 1405, 59<sup>th</sup> Legis. Assem. (2005): no identification necessary for voters personally known to election officials. [2/15/05 failed to pass House]
- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Note:**
    - North Dakota is exempt from HAVA identification and provisional voting requirements because it does not require registration. Secretary of State, Al

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Jaeger, North Dakota HAVA Plan (2004), <http://www.state.nd.us/hava/documents/docs/2004-final-state-plan.pdf>.

- **Is ID required?**
  - **At polls:**
    - **PRIOR LAW:**
      - Must show driver's license, form of identification with photo and birth date, or any other form of identification permitted by the Secretary of State (see below for forms okay under this previous provision). N.D. Cent. Code § 16.1-05-07 (2005).
        - Exception: voter states his date of birth and a poll worker can personally vouch for him. N.D. Cent. Code § 16.1-05-07 (2005).
    - **RECENT BILL PASSED:**
      - Must show identification with the voter's address and date of birth. 2005 N.D. Laws 183, sec. 1, § 16.1-05-07.
        - Bill maintains the exception described above. *Id.*
  - **First time voters or all?**
    - All voters. No registration, so all voters are the same. However, some precincts maintain lists of voters that have voted in past elections. The voters appearing on this list are less likely to be challenged.
  - **When?**
    - At polls. 2005 N.D. Laws 183, sec. 1, § 16.1-05-07.
  - **What types of ID?**
    - **PRIOR LAW:** valid drivers license; valid state identification card; valid federally issued identification card, including: (1) passport (2) agency identification card; valid tribal identification card; valid student identification card; valid US military identification card; utility bill dated thirty days prior to election day with name and residential address; or change of address verification letter from the US Postal Service. *Id* Requirements, *available at* <http://www.state.nd.us/hava/education/doc/id-requirements.pdf>.
    - **RECENT BILL PASSED:** official form of identification issued by the State, official identification issued by a tribal government, form of identification prescribed by Secretary of State, or any combination of the previous three. 2005 N.D. Laws 183, sec. 1, § 16.1-05-07.
  - **State or federal elections?**
    - Both. 2005 N.D. Laws 183, sec. 1, § 16.1-05-07.
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Not specific, but if the voter is not personally known to election officials, he will probably be challenged. A challenged voter must execute an affidavit. The voter votes a regular ballot. N.D. Cent. Code § 16.1-05-07 (2005); N.D. Cent. Code § 16.1-05-06 (2005); *see also* Alvin Jaeger, Secretary of State, 2004 Election Officials' Manual (2004), <http://www.state.nd.us/sec/forms/pdf/election-offic-manual.pdf>.
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - Affidavit if he is challenged. N.D. Cent. Code § 16.1-05-06 (2005).

- **Challenge available at polls?**
  - Yes. Poll challengers permitted at polls. Election board members may challenge. N.D. Cent. Code § 16.1-05-06 (2005).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 29, 2005  
**RE:** States for ID requirements chart: Ohio

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### Ohio

#### Summary:

Ohio has little formal law on voter identification. All voters are required to announce their name and address and sign the poll book, which is then compared to the voter registration card. Ohio Rev. Code Ann. § 3505.18 (2004). For voters who registered by mail and are voting for the first time in a federal election only the federal HAVA requirements apply. J. Kenneth Blackwell, Secretary of State, Ohio Voter Information Guide (2005), *available at* <http://serform.sos.state.oh.us/sos/pubAffairs/elections/voteGuide.pdf>. Ohio has not enacted a law incorporating the HAVA requirements into state law, thus the requirement only applies in federal elections, as required by the federal law. Ohio Secretary of State's website, <http://serform.sos.state.oh.us/sos/index.html>. All requirements are exactly what is required under federal law.

Ohio is considering several bills which would change voter identification requirements. SB 3 and HB 3 would enact the HAVA identification requirements for all elections. SB 3, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005); HB 3, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005). SB 36 would limit HAVA to voters who registered by mail voting for the first time in a federal election and apply a photo identification requirement to all other voters. SB 36, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005). HB 129 would eliminate election day challenges. HB 129, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005)

- **Statutes:** Ohio Rev. Code Ann. § 3505.18 (2004). [There is no statute implementing HAVA]
  - **Passed:**
    - § 3505.18 – at least since 1991.
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - SB 3, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005): applies HAVA identification requirements to all elections. [1/24/05 in committee]
  - HB 3, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005): adds identification requirement to voter registration form; if notification postcard returned, the voter must show identification at the polls; codifies HAVA identification provisions; provides provisional ballots for those without identification; requires voter who votes provisionally to return within ten days with identification. [5/17/05 passed House; second reading in Senate, in Senate committee]
  - SB 36, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005): enacts HAVA requirements for elections for federal office only; photo identification requirement for all voters not subject to HAVA. [1/26/05 introduced and referred to committee]
  - HB 129, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005): eliminates challenges on election day. [3/15/05 introduced, referred to committee]
- **Case law (from annotations):** none

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- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration/polls/HAVA:**
      - New registrants who register by mail are required to provide identification either with the registration or at the polls unless the voter provided his/her current driver's license number or the last four digits of his/her social security number on the registration form. J. Kenneth Blackwell, Secretary of State, Ohio Voter Information Guide (2005), *available at* <http://serform.sos.state.oh.us/sos/pubAffairs/elections/voteGuide.pdf>.
    - **At polls/all voters:**
      - Announce name and address and sign poll book, which is compared to registration. Ohio Rev. Code Ann. § 3505.18 (2004).
  - **First time voters or all?**
    - First time voters who register by mail. J. Kenneth Blackwell, Secretary of State, Ohio Voter Information Guide (2005), *available at* <http://serform.sos.state.oh.us/sos/pubAffairs/elections/voteGuide.pdf>.
  - **When?**
    - At registration or at polls.
  - **What types of ID?**
    - A copy of a current and valid photo identification OR a copy of a current utility bill, bank statement, paycheck, government check, or other government document showing name and address. J. Kenneth Blackwell, Secretary of State, Ohio Voter Information Guide (2005), *available at* <http://serform.sos.state.oh.us/sos/pubAffairs/elections/voteGuide.pdf>.
    - Ohio liberally construes identification requirements allowing "any reasonable means of identification such as utility bills, rent receipts or any legal or quasi-legal instrument that bears the name and address of the prospective voter." Changing the Election Landscape in the State of Ohio: A State Plan to Implement the Help America Vote Act of 2002 in Accordance with Public Law 107-252, §253(b) (2005), *available at* <http://serform.sos.state.oh.us/sos/hava/files/StatePlan12005.pdf>.
  - **State or federal elections?**
    - Federal only. Secretary of State's webpage repeatedly refers to HAVA requirements applying "for persons registering by mail and voting for the first time in a *federal* election." Ohio Secretary of State's website, <http://serform.sos.state.oh.us/sos/index.html> (emphasis added).
      - Also, there is no statute or administrative regulation implementing HAVA, thus only the federal law applies.
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Same as federal law, provisional ballot.
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - None.

- **Challenge available at polls?**
  - Yes, by any challenger, voter properly in the polling place, or election judge. Ohio Rev. Code Ann. § 3505.20 (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 29, 2005  
**RE:** States for ID requirements chart: Oklahoma

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### Oklahoma

#### Summary:

Oklahoma does not require anything beyond the federal requirements of HAVA for voter identification. Okla. Stat. Ann. tit. 26, § 7-115.2 (2004). Voters who registered by mail and are voting for the first time in a federal election are required to produce identification if they did not produce it at registration. *Id.* The types of identification are identical to the forms permitted under HAVA except for the addition of a voter registration card. *Id.* Without proper identification, the voter may vote a provisional ballot. Okla. Stat. Ann. tit. 26, § 7-115.2 (2004); Okla. Stat. Ann. tit. 26, § 7-116.1 (2004). All other voters must merely announce their name and sign the precinct register prior to voting. Okla. Stat. Ann. tit. 26, § 7-114 (2004); Okla. Stat. Ann. tit. 26, § 7-117 (2004).

There are several bills pending concerning voter identification. HB 1373, HB 1487, and HB 1528 require photo identification prior to voting, but allow voters to execute an affidavit as an alternative. HB 1373, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005); HB 1487, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005); HB 1528, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005). SB 456 would require voters to show a voter identification card prior to voting. SB 456, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005). SB 298 and SB 791 would require proof of identity (government issued photo identification) at the polls. SB 298, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005); SB 791, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005). All of these bills are currently in committee, but HB 1487 has passed the House and is in committee in the Senate.

- **Statutes:** Okla. Stat. Ann. tit. 26, § 7-115.2 (2004).
  - **Passed:**
    - § 7-115.2 – 2004
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - HB 1373, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005): requiring photo identification at the polls; voters may execute an affidavit as an alternative. [2/8/05 in committee]
  - HB 1487, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005): requiring photo identification at the polls; voters may execute an affidavit as an alternative. [3/16/05 passed House; 3/28/05 in Senate committee]
  - HB 1528, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005): requiring photo identification at the polls; voters may execute an affidavit as an alternative. [2/8/05 in committee]
  - SB 298, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005): requiring proof of identity at the polls, this includes: driver's license, passport, state identification card, or photocopy of the previous three. [2/8/05 in committee]

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- SB 456, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005): requiring voters to present a voter identification card prior to voting. [2/8/05 in committee]
- SB 791, 50<sup>th</sup> Legis Sess., 1<sup>st</sup> Sess. (Okla. 2005): requiring proof of identity at the polls, this includes: voter identification card, driver's license, passport, state identification card, or photocopy of the previous four. [2/8/05 in committee]
- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration/at polls/HAVA requirements:**
      - Registered voters who submitted applications for new voter registration by mail who are voting for the first time in a federal election are required to produce identification. Okla. Stat. Ann. tit. 26, § 7-115.2 (2004).
    - **At polls/all voters:**
      - Announce name and sign in precinct register. Okla. Stat. Ann. tit. 26, § 7-114 (2004); Okla. Stat. Ann. tit. 26, § 7-117 (2004).
  - **First time voters or all?**
    - First time voters who registered by mail. Okla. Stat. Ann. tit. 26, § 7-115.2 (2004).
  - **When?**
    - Either at registration or at polls. Okla. Stat. Ann. tit. 26, § 7-115.2 (2004).
  - **What types of ID?**
    - Current and valid photo identification
    - Voter identification card (addition from HAVA)
    - copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address
    - Okla. Stat. Ann. tit. 26, § 7-115.2 (2004).
  - **State or federal elections?**
    - Possibly federal only. Statute says "when they vote for the first time in a federal election." Okla. Stat. Ann. tit. 26, § 7-115.2 (2004).
    - Probably both, since no distinction made on voter registration form. State of Oklahoma Voter Registration Form, at <http://www.state.ok.us/~elections/vrform.pdf>.
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Provisional ballot for all elections and issues. Okla. Stat. Ann. tit. 26, § 7-115.2 (2004); Okla. Stat. Ann. tit. 26, § 7-116.1 (2004).
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - None, but vote only counts if election board can verify the voter's identity. Okla. Stat. Ann. tit. 26, § 7-116.1 (2004).
  - **Challenge available at polls?**
    - No. Election website does not mention challenges, and there are no administrative regulations or statutes allowing for challenge at the polls.

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** June 30, 2005  
**RE:** States for ID requirements chart: Oregon

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### Oregon

#### **Summary:**

Oregon is unique in its election law. Since 2000, Oregon has conducted even Presidential elections by mail. Consequently, the identification requirements of HAVA are modified to accommodate vote-by-mail. Oregon does not require any identification beyond the HAVA requirements. First time voters who registered by mail must provide identification (same forms as HAVA) with their registration, upon request after registration, or with their ballot. Secretary of State, Bill Bradbury, Oregon Elections Plan: To Implement the Help America Vote Act of 2002, 22-23 (2003), [http://www.uhavavote.org/pdf/state\\_plan.pdf](http://www.uhavavote.org/pdf/state_plan.pdf). Without identification, a voter may still vote for state and local elections as normal. Secretary of State Letter dated December 26, 2002, at [http://www.sos.state.or.us/elections/votreg/hava\\_nr.pdf](http://www.sos.state.or.us/elections/votreg/hava_nr.pdf). For federal elections, their ballot is considered a provisional ballot, and if their eligibility can be verified, their ballot will count. Secretary of State, Bill Bradbury, Oregon Elections Plan: To Implement the Help America Vote Act of 2002, 22-23 (2003), [http://www.uhavavote.org/pdf/state\\_plan.pdf](http://www.uhavavote.org/pdf/state_plan.pdf).

Obviously, there is no identification requirement for other voters, as they are permitted to vote by mail; however, for all voters, the signature on their ballot envelope is compared to the signature on their registration card.

There are two bills pending which concern voter identification. HB 2583 and 2841 would both require proof of citizenship at registration in the form of a passport, birth certificate, or naturalization document. HB 2583, 73<sup>rd</sup> Legis. Assem. (Or. 2005); HB 2841, 73<sup>rd</sup> Legis. Assem. (Or. 2005). HB 2583 has passed the House and is pending in the Senate.

- **Statutes:** none concerning voter identification.
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - HB 2583, 73<sup>rd</sup> Legis. Assem. (Or. 2005): voters must provide proof of citizenship (passport, birth certificate, naturalization documents) with registration [5/19/05 passed House, 5/27/05 in Senate committee]
  - HB 2841, 73<sup>rd</sup> Legis. Assem. (Or. 2005): voters must provide proof of citizenship (passport, birth certificate, naturalization documents) with registration [3/11/05 in committee]
- **Case law (from annotations):** none
- **Administrative regulations:** none concerning voter identification.
- **What the law requires:**
  - **Is ID required?**
    - **First time voters:**

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- HAVA requirements, same identification forms. Voting in Oregon Guide, <http://www.uhavavote.org/votingguide/register.html#where>.
- **At polls/all voters:**
  - None, vote by mail, so voters do not attend polls.
  - Signature on envelope is checked against registration when ballot returned.
- **First time voters or all?**
  - First time voters who register by mail. Voting in Oregon Guide, <http://www.uhavavote.org/votingguide/register.html#where>.
- **When?**
  - At registration, after request to provide identification after registration received, or with mailed ballot. Secretary of State, Bill Bradbury, Oregon Elections Plan: To Implement the Help America Vote Act of 2002, 22-23 (2003), [http://www.uhavavote.org/pdf/state\\_plan.pdf](http://www.uhavavote.org/pdf/state_plan.pdf).
- **What types of ID?**
  - Must have name and address, acceptable forms include:
    - valid photo identification (such as a driver's license)
    - a paycheck stub
    - a utility bill
    - a bank statement
    - a government document (with name and address of the voter)
  - Voter registration form, at <http://www.sos.state.or.us/elections/votreg/sc1500.pdf>
- **State or federal elections?**
  - Federal only. Without identification, a voter may still vote as normal in state and local elections. Secretary of State Letter dated December 26, 2002, at [http://www.sos.state.or.us/elections/votreg/hava\\_nr.pdf](http://www.sos.state.or.us/elections/votreg/hava_nr.pdf).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot as to the federal elections only. Secretary of State, Bill Bradbury, Oregon Elections Plan: To Implement the Help America Vote Act of 2002, 22-23 (2003), [http://www.uhavavote.org/pdf/state\\_plan.pdf](http://www.uhavavote.org/pdf/state_plan.pdf).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - If the election officials cannot verify the voter's eligibility to vote, no vote for federal office. May still vote for state and local offices as normal. Secretary of State, Bill Bradbury, Oregon Elections Plan: To Implement the Help America Vote Act of 2002, 22-23 (2003), [http://www.uhavavote.org/pdf/state\\_plan.pdf](http://www.uhavavote.org/pdf/state_plan.pdf).
- **Challenge available at polls?**
  - Yes, when election conducted at polling places, voters may be challenged by election board clerks or any voter. Or. Rev. Stat. § 254.419 (2003).
- **Miscellaneous:**

- Has election by mail for all elections on the general election date or primary date. (began in 1998



## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 1, 2005  
**RE:** States for ID requirements chart: Pennsylvania

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### Pennsylvania

#### Summary:

Currently, all first time voters must produce either photo identification or an alternative identification with their name and address prior to voting at the polls. Pa. Stat. Ann. tit. 25, § 3050 (2004). Without either form of identification, the voter must sign an affidavit and cast a provisional ballot. *Id.* This identification requirement is stricter than HAVA; all first time voters must produce identification, regardless of the method of registration. *Id.* It is also stricter than HAVA in that the identification must be produced at the polls, and providing identification at registration does not exempt the voter from the requirement. *Id.* The requirement applies to both state and federal elections. The forms of identification are similar to HAVA and include a wide array of forms of identification. *Id.*

Pennsylvania's election law concerning first time voters voting in person will change slightly after October 8, 2005. 2004 Pa. Stat. Ann. tit. 25, § 3050 (2004); 2004 Pa. Laws 97. After October 8, election officers must sign an affidavit attesting to the fact that the voter's identification was actually examined, and a procedure for challenging provisional ballots will go into effect. *Id.*

Voters who vote absentee for the first time and registered by mail are only subject to the HAVA requirements and only if they registered by mail. Commonwealth of Pennsylvania, State Plan As Amended, As Required by Public Law 107-252, The Help America Vote Act of 2002, 28, [http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004\\_state\\_plan\\_\(elements\\_6\\_10\\_12\\_to\\_be\\_sent\\_to\\_eac\)-approved\\_\(08-13-04\)1.doc](http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004_state_plan_(elements_6_10_12_to_be_sent_to_eac)-approved_(08-13-04)1.doc).

- **Statutes:** Pa. Stat. Ann. tit. 25, § 3050 (2004).
  - **Passed:**
    - § 3050 – 2002, amended in 2004 with changes effective on 10/8/05.
- **Session law/recent legislation passed:**
  - 2004 Pa. Laws 97: amends § 3050, effective October 8, 2005, requires election official to sign an affidavit that identification was examined; changes provisional balloting procedure.
    - SB 346
- **Pending legislation:** none
- **Case law (from annotations):**
  - *In re Second Legislative Dist. Election*, 4 Pa. D. & C.2d 93 (1955): A vote cast by a voter in her maiden name, after her marriage and the death of her husband, without any change in her registration, although irregular and contrary to instructions, will be counted where there is no question of identity.
  - *In re Morganroth Election Contest*, 50 Pa. D. & C. 143 (1944): In the absence of fraudulent intent on the part of the voter or of the election officers

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or of any conspiracy between them, the failure of an election board to require each elector desiring to vote first to sign a voter's certificate, and to compare the signature on such certificate with the elector's signature in the district register, is a mere irregularity not warranting rejection of entire vote cast in district.

- *Commw. v. Albert*, 30 A.2d 184 (Pa. Super. Ct. 1943): Each member of election board must be on guard to prevent any form of fraud or irregularity that would interfere with a fair election, and if irregularity or fraud being perpetrated in course of election is detected, appropriate action should be taken immediately to stop such misconduct. Election inspector having numbered list of voters and record of those who assisted voters and inspector whose duties included comparing signatures of those desiring to vote were under a duty to prevent persons not registered as qualified electors from signing the names of electors to voters' certificates
- *In re General Election in City and County of Philadelphia on November 8, 1938*, 2 A.2d 301 (Pa. 1938): Where city registration commissioners and their agents failed properly to file registration cards in the election districts in which electors resided, substitution of affidavits to duplicate original registration forms for missing registration cards would not be authorized, but voters could establish their right to vote by secondary evidence before judges qualified to sit in the common pleas. The requirement of this section that voter's registration card be in the district register of voter's election district is a mere aid in the proof of the existence of the record showing voter's qualifications, as a part of a public record. The rule that contents of a lost or missing record may be proved by secondary evidence is applicable to registration cards showing voter's qualifications.
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **First time voters:**
      - **UNTIL OCT 8:**
        - All first time voters must produce photo identification prior to voting at the polls. Pa. Stat. Ann. tit. 25, § 3050 (a) (2004).
        - If the voter has no photo identification, they must produce alternative identification with name and address. Pa. Stat. Ann. tit. 25, § 3050 (a.1) (2004).
        - If no identification at all, the voter must sign an affidavit and cast a provisional ballot. Pa. Stat. Ann. tit. 25, § 3050 (a.2), (a.4)(2) (2004).
      - **AFTER OCT 8 (changes underlined):**
        - All first time voters must produce photo identification prior to voting at the polls, and election officer must sign affidavit that the identification was examined. Pa. Stat. Ann. tit. 25, § 3050 (a) (2004).

- If the voter has no photo identification, they must produce alternative identification with name and address, and election officer must sign affidavit that the identification was examined. Pa. Stat. Ann. tit. 25, § 3050 (a.1) (2004).
- If no identification at all, the voter must sign an affidavit and cast a provisional ballot. Pa. Stat. Ann. tit. 25, § 3050 (a.2), (a.4)(2) (2004).
- Procedure for challenging provisional ballots goes into effect on Oct. 8. Pa. Stat. Ann. tit. 25, § 3050 (a.4)(4) (2004).
- **All voters:**
  - All voters must sign a voter's certificate, and their signature is compared with the signature on file. Pa. Stat. Ann. tit. 25, § 3050 (a.3) (2004).
- **First time voters or all?**
  - First time voters in the county or voters that have moved within the county – all who are new registrants who vote in person, not just those who registered by mail. Pa. Stat. Ann. tit. 25, § 3050 (a)-(a.2) (2004); Pennsylvania Voter Guide, 3, <http://www.dos.state.pa.us/voting/lib/voting/guide/engguide.pdf>.
  - Absentee voters who vote for the first time must submit identification either with their registration or with their ballot if they registered by mail only. Commonwealth of Pennsylvania, State Plan As Amended, As Required by Public Law 107-252, The Help America Vote Act of 2002, 28, [http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004\\_state\\_plan\\_elements\\_6\\_10\\_12\\_to\\_be\\_sent\\_to\\_eac--approved\\_\(08-13-04\)1.doc](http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004_state_plan_elements_6_10_12_to_be_sent_to_eac--approved_(08-13-04)1.doc).
- **When?**
  - At polls for voters who vote in person. Pa. Stat. Ann. tit. 25, § 3050 (a) (2004); Commonwealth of Pennsylvania, State Plan As Amended, As Required by Public Law 107-252, The Help America Vote Act of 2002, 28, [http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004\\_state\\_plan\\_elements\\_6\\_10\\_12\\_to\\_be\\_sent\\_to\\_eac--approved\\_\(08-13-04\)1.doc](http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004_state_plan_elements_6_10_12_to_be_sent_to_eac--approved_(08-13-04)1.doc).
  - At either registration or with ballot for absentee voters. Commonwealth of Pennsylvania, State Plan As Amended, As Required by Public Law 107-252, The Help America Vote Act of 2002, 28, [http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004\\_state\\_plan\\_elements\\_6\\_10\\_12\\_to\\_be\\_sent\\_to\\_eac--approved\\_\(08-13-04\)1.doc](http://www.hava.state.pa.us/hava/lib/hava/stateplan/2004_state_plan_elements_6_10_12_to_be_sent_to_eac--approved_(08-13-04)1.doc).
- **What types of ID?**
  - UNTIL OCT 8, 2005 & AFTER OCT. 8 – photo identification (types of identification are the same):
    - Valid driver's license or identification card issued by Department of Transportation

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- Valid identification card issued by another State agency
- Valid identification issued by federal government
- Valid passport
- Valid student identification card
- Valid employee identification card
- Valid military identification card
- Pa. Stat. Ann. tit. 25, § 3050 (a) (2004).
- UNTIL OCT. 8 & AFTER OCT. 8 – alternative identification types:
  - Nonphoto identification issued by PA or agency of
    - Voter identification card – not in statute but listed as acceptable form on website. Pennsylvania Department of State Website, <http://www.hava.state.pa.us/hava/cwp/view.asp?a=1189&q=442312>
  - Nonphoto identification issued by federal government
  - Firearm permit
  - Current utility bill
  - Current bank statement
  - Paycheck
  - Government check
  - Pa. Stat. Ann. tit. 25, § 3050 (a.1) (2004).
- **State or federal elections?**
  - Both. Pa. Stat. Ann. tit. 25, § 3050 (2004).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Pa. Stat. Ann. tit. 25, § 3050 (a.2) (2004).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit. Pa. Stat. Ann. tit. 25, § 3050 (a.4)(2) (2004).
- **Challenge available at polls?**
  - Yes. Pa. Stat. Ann. tit. 25, § 2685 (2004); Pa. Stat. Ann. tit. 25, § 2687 (2004); Pa. Stat. Ann. tit. 25, § 3528 (2004).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 1, 2005  
**RE:** States for ID requirements chart: Rhode Island

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### Rhode Island

#### Summary:

Rhode Island does not require any identification of voters by State law. State law requires that voters state their name and address and sign a ballot application. R.I. Gen. Laws § 17-19-24 (2004). The only identification requirements that apply to voters are the federal HAVA requirements for first time voters who register by mail. It appears, however, from Rhode Island's election website that Rhode Island extends the requirement to all elections, not just federal elections. Rhode Island Voter Registration Form, <http://www.elections.state.ri.us/docs/VR6-04.pdf>. Without identification, voters may vote a provisional ballot, as required by federal law. Rhode Island Board of Elections: Frequently Asked Questions, <http://www.elections.state.ri.us/frequent.htm>.

There is a bill pending in the House which would require voters to present either one form of identification with the name, address, and photo of the voter or two forms of identification with the name and address of the voter. HB 5976, 2005-2006 Legis. Sess. (R.I. 2005).

- **Statutes:** R.I. Gen. Laws § 17-19-24 (2004). [But no statute implementing HAVA requirements]
  - **Passed:**
    - § 17-19-24 – at least since 1994 – probably a lot longer
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - HB 5976, 2005-2006 Leg. Sess. (R.I. 2005): requiring all voters to present one form of identification with the name, address, and photo of the voter or two forms with the name and address of the voter. [3/23/05 Committee hearing]
- **Case law (from annotations):** none
- **Administrative regulations:** none, and has no administrative code.
- **What the law requires:**
  - **Is ID required?**
    - **For registration or polls/HAVA:**
      - First time voters who mailed their registration must provide identification either at polls or at registration – HAVA requirement. (no state statute) Rhode Island Board of Elections: Registering to Vote, <http://www.elections.state.ri.us/registration/intro.htm>; Rhode Island Voter Registration Form, <http://www.elections.state.ri.us/docs/VR6-04.pdf>.

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- **At polls/all voters:**
      - All voters must state their name and address at the polls and sign their name on a ballot application. R.I. Gen. Laws § 17-19-24 (2004).
- **First time voters or all?**
  - First time voters who mail their registration. Rhode Island Board of Elections: Registering to Vote, <http://www.elections.state.ri.us/registration/intro.htm>; Rhode Island Voter Registration Form, <http://www.elections.state.ri.us/docs/VR6-04.pdf>.
- **When?**
  - Registration or polls. Rhode Island Board of Elections: Registering to Vote, <http://www.elections.state.ri.us/registration/intro.htm>.
- **What types of ID?**
  - Either a copy of a current and valid photo identification OR a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the voter's name and address.
  - Rhode Island Board of Elections: Registering to Vote, <http://www.elections.state.ri.us/registration/intro.htm>; Rhode Island Voter Registration Form, <http://www.elections.state.ri.us/docs/VR6-04.pdf>
- **State or federal elections?**
  - Probably both. Doesn't seem to be a distinction made, most materials say "when voting for the first time" rather than "when voting for the first time in a federal election." Rhode Island Voter Registration Form, <http://www.elections.state.ri.us/docs/VR6-04.pdf>.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Rhode Island Board of Elections: Frequently Asked Questions, <http://www.elections.state.ri.us/frequent.htm>.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - None beside provisional vote. R.I. Gen. Laws § 17-19-24.1 (2004).
- **Challenge available at polls?**
  - Yes, watchers and election officials may challenge at polls. R.I. Gen. Laws § 17-19-22 (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Sarah Shive  
**DATE:** August 31, 2005  
**RE:** States for ID requirements chart: South Carolina

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### South Carolina

#### Summary:

South Carolina requires voters to present a valid South Carolina driver's license or other photographic South Carolina identification, if the voter does not have a driver's license. S.C. Code Ann. §7-13-710. A voter may also present their signed registration notification. *Id.*

South Carolina has not codified provisions for voter identification when voters register in person or via mail. The state's voter registration by mail form offers evidence that they comply with the Help America Vote Act of 2002 in their actual identification requirements, but have made no state law related to the matter.

There are also no state statutes related to the consequences of having no identification when appearing at the polls.

- **Statutes:**
  - **Passed:**
    - **§7-13-710** – 1962; 1988 permitted registration notification to be used as identification if signed.
- **Session law/recent legislation passed:**
  - None.
- **Pending legislation:**
  - **2005 SC H.B. 3451:** proposes to add a U.S. passport as a form of identification that may be presented by a voter at the polls (Feb. 3, 2005)
  - **2005 SC H.B. 3461:** proposes to add a photographic college identification card as identification that may be presented by a voter at the polls if they do not have a driver's license (Feb. 3, 2005)
- **Case law (from annotations):**
  - None
- **Administrative regulations:**
  - None.
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - No statutes address the matter.
    - **At polls:**
      - At the polls, voters are required to present a valid South Carolina driver's license or other photographic South Carolina identification, if the voter does not have a driver's license. A signed copy of the voter's registration confirmation may also be presented if the voter does not have a driver's license.
  - **First time voters or all?**

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- All
- **When?**
  - At the polls before voting.
- **What types of ID?**
  - When registering by mail: No statutes address the matter.
  - When registering in person: No statutes address the matter.
  - At the polls: Voters are required to present a valid South Carolina driver's license or other photographic South Carolina identification, if the voter does not have a driver's license. A signed copy of the voter's registration confirmation may also be presented if the voter does not have a driver's license.
- **State or federal elections?**
  - Both
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - No statutes address the matter.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - No statutes address the matter.
- **Challenge available at polls?**
  - Yes.

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jaime Molbreak  
**DATE:** August 30, 2005  
**RE:** Voter Identification – South Dakota

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### South Dakota

#### Summary

In order to cast a ballot in an election, South Dakota voters must present themselves to the precinct worker in charge of the registration list, announce their name and show valid photo identification. S.D. CODIFIED LAWS § 12-18-6.1 (Michie 2005). If the voter does not have a valid identification card, the voter must complete a personal identification affidavit. § 12-18.6.2. A member of the election board must verify that the picture on the ID matches the voter. § 12-18.6.3. The name on the ID must also match the name on the voter registration list. *Id.* If the election board worker cannot make this verification, the worker may consider other forms of identification, personal knowledge, and the voter's explanation. *Id.* If the voter's identity cannot be proven to the satisfaction of the election board the voter may vote a provisional ballot. *Id.* This is significant because between 5 percent and 10 percent of South Dakota's Native American population lack a photo ID due to poverty.<sup>1</sup> §12-1-1 of S.D. CODIFIED LAWS (2005) provides that the provisions in Title 12 that follow apply to elections for state and local officers. In certain counties, a person proficient in both local Sioux dialect and English must be present in all precincts of the county. § 12-3-10. South Dakota does not offer early voting.<sup>2</sup>

- **Statutes** S.D. CODIFIED LAWS § 12-4-5.5 (Michie 2005); S.D. CODIFIED LAWS § 12-19-2.1 (Michie 2005)
  - **Passed**
    - The legislature recently voted to amended § 12-4-5.5 to include a check for authenticity of a driver's license number or social security number at the time voter registration information is transmitted from a county to the statewide voter registration file. HB 1007.
    - Additionally, the legislature amended § 12-19-2.1, permitting absentee voting on the day of an election. HB 1110.
- **Session Law / Recent Legislation Passed**
  - See above
- **Pending Legislation**
  - SB 120, 80<sup>th</sup> Gen. Assem. 2005 Reg. Sess. (S.D. 2005) failed a vote in the Senate, but was proposed to allow a voter who is recognized by election judges to vote without photo identification or affidavit.

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<sup>1</sup> Information from [www.reformelections.org](http://www.reformelections.org) (August 30, 2005).

<sup>2</sup> National Conference of State Legislatures, <http://www.ncsl.org/programs/legman/elect/absentearly.htm> (August 30, 2005).

- **Case Law (from annotations)**
  - None
- **Administrative Regulations**
  - None
- **What the Law Requires**
  - **Is ID Required?**
    - **For Registration:**  
Provide driver's license number or last four digits of social security number. These will be subject to a review for authenticity pursuant to aforementioned recent legislation. If a person does not have a driver license or social security number, the person may only register at the county auditor's office and must sign a statement to that effect. § 12-4-5.4.
    - **At Polls:**  
A voter requesting a ballot must present a valid form of identification. § 12-18-6.1. If a voter is not able to present a form of personal identification as required by § 12-18-6.1, the voter may complete an affidavit in lieu of the personal identification.
    - **Absentee Voters:**  
Recent legislation provides that absentee voting is permitted on the day of an election. See HB 1110. The election board compares the signature on the statement on the ballot return envelope with the signature on the written application received from the auditor. § 12-19-10.
  - **First-time voters or all?**  
All.
  - **When?**  
At the polls.
  - **What types of ID?**  
A voter must announce their name and present either a South Dakota driver's license or non-driver identification card; a passport or an identification card, including a picture, issued by an agency of the United States government; a tribal identification card, including a picture; or an identification card, including a picture, issued by an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota. § 12-18-6.1.
  - **Consequences of having no ID (provisional ballot v. regular ballot)**  
If the voter's identity can't be proven to the satisfaction of the election board, the voter may vote a provisional ballot. § 12-18.6.3.
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**  
If the voter does not have a valid identification card, the voter must complete a personal identification affidavit. § 12-18-6.2. The affidavit requires the voter to provide his or her name and address.

▪ **Challenge available at polls?**

Yes. A voter may only be challenged as to their identity or on grounds that within fifteen days preceding the election the person has been convicted of a felony or declared by proper authority to be mentally incompetent. The proceedings are to be conducted before the precinct superintendent and precinct deputies who must determine from the evidence presented whether or not the person is permitted to vote. § 12-18-10. Pursuant to § 12-18-39, If any person is successfully challenged under § 12-18-10, the person may cast a provisional ballot.

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jaime Lebo  
**DATE:** September 1, 2005  
**RE:** States for ID requirements chart: Tennessee

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### Tennessee

#### Summary:

In Tennessee, registrars must verify that the voter's signature and information on the application for ballot matches the signature and information on the duplicate permanent registration record, if the county is not computerized. Tenn. Code Ann. §2-7-112 (2005). If the county is electronic, then the registrar must compare the voter's signature and information on the computerized signature list with other evidence of identification supplied by the voter. *Id.* "Evidence of identification" means a valid voter's registration certificate, Tennessee driver license, social security card, credit card bearing the applicant's signature or other document bearing the applicant's signature. *Id.*

If the voter's eligibility to vote at a particular precinct cannot be determined, the voter may vote provisionally with verification of the voter's residential address. *Id.* The type of verification includes, but is not limited to, a Tennessee driver license, a residential lease agreement, a utility bill or other document bearing the applicant's residential address. *Id.*

If the voters register by mail, they must present satisfactory proof of identity before voting. §2-2-115(b)(7) (2005).

There are two bills that are pending which would require the voter to present a photo identification to the registrar or two forms of identification that state the name and address of the voter. 2005 TN S.B. 1595 (SN); 2005 TN H.B. 196 (SN).

- **Statutes:** Tenn. Code Ann. §2-7-112 (2005).
  - 2003 added provisions to set out the procedures used for casting a provisional ballot
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - 2005 TN S.B. 1595 (SN), 104<sup>th</sup> Gen. Assem.: amends §2-7-112(a)(1) and requires the voter to present to the registrar one form of identification that bears the name, address and photograph of the voter or two different forms of identification that bear the name and address of the voter [introduced 2/3/05]
  - 2005 TN H.B. 196 (SN), 104<sup>th</sup> Gen. Assem.: amends §2-7-112(a)(1) and requires the voter to present to the registrar one form of identification that bears the name, address and photograph of the voter or two different forms of identification that bear the name and address of the voter [introduced 2/1/05]

- **Case law (from annotations):**
  - none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For registration:**
      - If registering by mail: before voting, voter must present satisfactory proof of identity. This does not apply to a voter who is on the permanent absentee voting register. §2-2-115(b)(7) (2005).
    - **At polls:**
      - After registrar verifies that the voter's signature and information on the application for ballot matches the signature and information on the duplicate permanent registration record, he will initial the application, which will serve as the voter's identification for a paper ballot or for admission to a voting machine. Tenn. Code Ann. §2-7-112(a)(1) (2005).
      - **Computerized county:**
        - Registrar must compare the voter's signature and information on the computerized signature list with other evidence of identification supplied by the voter. §2-7-112(a)(2)(B) (2005).
    - **Provisional voter:**
      - Voter must present verification of the residential address under which the person desires to vote. §2-7-112(a)(3)(A)(i) (2005).
    - **Early voting at polls:**
      - Upon completion of the application, the administrator of elections shall compare the signature of the voter with the signature on the voter's permanent registration record, or other evidence of identification if computerized duplicate registration records are used. §2-6-109(a) (2005).
  - **First time voters or all?**
    - All. §2-7-112 (2005).
  - **When?**
    - At the polls. §2-7-112 (2005).
  - **What types of ID?**
    - For purposes of comparing the person's signature on the application for ballot, "evidence of identification" shall be a valid voter's registration certificate, Tennessee driver license, social security card, credit card bearing the applicant's signature or other document bearing the applicant's signature. §2-7-112(c) (2005).
    - For purposes of registering a voter to vote provisionally, "verification of residential address" shall include, but is not limited to, a Tennessee driver license, a residential lease agreement, a

utility bill or other document bearing the applicant's residential address. §2-7-112(d) (2005).

- **State or federal elections?**
  - All elections. §2-7-112 (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. §2-7-112(a)(3)(A) (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Must execute an affidavit of identity. §2-7-112(a)(2)(D) (2005).
- **Challenge available at polls?**
  - Yes. §2-7-123 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 5, 2005  
**RE:** States for ID requirements chart: Texas

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### Texas

#### Summary:

Texas law requires that first time voters who registered by mail provide proof of identity. Tex. Elec. Code Ann. § 13.122 (2004). The forms of identification include: (1) driver's license or state identification card; (2) photo identification of any kind; (3) birth certificate; (4) citizenship papers; (5) passport; (6) official mail from a government entity; (7) current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and current address. Tex. Elec. Code Ann. § 63.0101 (2004). Voters may submit the proof of identity at the polls or with their registration. Texas Voter Registration Form, <http://www.sos.state.tx.us/elections/forms/vr17.pdf>.

Under Texas law, all voters must present their voter registration certificate prior to voting. Tex. Elec. Code Ann. § 63.001 (2004). Without the registration certificate (and voter is on precinct list of voters), the voter may only vote a regular ballot if he executes an affidavit that he does not have his voter registration certificate and shows proof of identification (same forms as above). Tex. Elec. Code Ann. § 63.008 (2004). If the voter does not have his registration certificate and is not on the precinct list of voters, he must execute an affidavit that he is a registered voter and is eligible to vote and vote a provisional ballot. Tex. Elec. Code Ann. § 63.009 (2004). However, if the precinct worker can determine the voter is eligible from identification presented, the voter may execute an affidavit that he does not have his certificate and vote a regular ballot. *Id.*

All voters must also sign the signature roster. Tex. Elec. Code Ann. § 63.002 (2004).

Texas recently passed HB 2309, which had required voter identification in earlier versions, but the enrolled version did not include the provisions. There were several bills pending this session which would have required voter identification at the polls, but most died in committee. HB 1706 is still pending and would require voters to present their voter registration certificate and two forms of identification (same forms as for proof of identity now). HB 1706, 79<sup>th</sup> Legis., Reg. Sess. (Tex. 2005).

#### • Statutes:

- Tex. Elec. Code Ann. § 63.001 (2004): must present voter registration certificate at polls.
- Tex. Elec. Code Ann. § 63.002 (2004): must sign signature register.
- Tex. Elec. Code Ann. § 63.006 (2004): voter with certificate not on the list may vote.
- Tex. Elec. Code Ann. § 63.008 (2004): without registration certificate (and on the precinct list of voters), voter must execute affidavit that he/she does

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not have the certificate with him/her and must present identification (otherwise, the voter votes provisionally).

- Tex. Elec. Code Ann. § 63.009 (2004): without registration certificate (and not on the precinct list of voters), voter must execute affidavit that he/she is a registered voter and is eligible and vote provisionally; however, if the precinct worker can determine that the voter is eligible from identification presented, the voter may execute an affidavit that he does not have the certificate and vote a regular ballot.
- Tex. Elec. Code Ann. § 63.0101 (2004): ID forms
- **Passed:**
  - § 63.001 – 1985
  - § 63.002 – 1985
  - § 63.006 – 1985
  - § 63.008 – 1985; amended in 1997, 2003
  - § 63.009 – 1985; amended in 1997, 2003
  - § 63.0101 – 1997; amended in 2003
- **Session law/recent legislation passed:** Texas passed HB 2309, which had required voter identification in an earlier version, but the voter identification provisions were dropped from the bill passed.
- **Pending legislation:**
  - HB 1706, 79<sup>th</sup> Leg., Reg. Sess. (Tex. 2005): would require voter to present voter registration certificate and two forms of identification (same list as currently used for proof of identity) [2/28/05 introduced; 5/3/05 passed House with amendments; 5/5/05 referred to Senate committee].
- **Case law (from annotations):**
  - *Deffebach v. Chapel Hill Independent School Dist.*, 650 S.W.2d 510 (Tex. App. 12 Dist. 1983): In regard to provision of V.A.T.S. Election Code art. 8.07 (repealed; but replaced) requiring voters to sign an affidavit upon failing to present to the election officials a current voter registration certificate, compliance with the provisions of such article were directory and not mandatory.
  - *Gottlieb v. Hofheinz*, 523 S.W.2d 7 (Tex. Civ. App. 1975), dismissed: Absent allegation and proof that certain votes were fraudulently induced or cast, voters in question were not disqualified merely because precinct judges did not acknowledge the affidavit pages they signed which stated that their voter registration certificates were missing or lost; provisions of former Election Code were directory.
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **First time voters/HAVA:**
      - First time voters who register by mail must provide proof of identification. Tex. Elec. Code Ann. § 13.122 (2004).
    - **At polls/all voters:**
      - Must present voter registration certificate. Tex. Elec. Code Ann. § 63.001 (2004).

- Without voter registration certificate (and voter is on precinct list of voters), the voter may vote a regular ballot if he executes an affidavit that he does not have his voter registration certificate and shows proof of identification. Tex. Elec. Code Ann. § 63.008 (2004).
- Without voter registration certificate (and not on the precinct list of voters), voter must execute affidavit that he is a registered voter and is eligible to vote and vote a provisional ballot. However, if the precinct worker can determine that the voter is eligible from identification presented, the voter may execute an affidavit that he does not have the certificate and vote a regular ballot. Tex. Elec. Code Ann. § 63.009 (2004).
- All accepted voters must sign signature roster. Tex. Elec. Code Ann. § 63.002 (2004).
- **First time voters or all?**
  - Looks like all voters have a requirement. First time voters who registered by mail must satisfy the requirement with proof of identity; all other voters may use either their registration certificate or proof of identity document. Tex. Elec. Code Ann. § 13.122 (2004); Tex. Elec. Code Ann. § 63.001 (2004); Tex. Elec. Code Ann. § 63.008 (2004); Tex. Elec. Code Ann. § 63.008 (2004).
- **When?**
  - For first time voters who registered by mail either at the polls or with registration. Texas Voter Registration Form, <http://www.sos.state.tx.us/elections/forms/vr17.pdf>.
  - However, all voters are required to present either proof of identity or a registration certificate at the polls.
- **What types of ID?**
  - All voters & first time voters – these documents are proof of identity:
    - (1) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;
    - (2) a form of identification containing the person's photograph that establishes the person's identity;
    - (3) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;
    - (4) United States citizenship papers issued to the person;
    - (5) United States passport issued to the person;
    - (6) official mail addressed to the person by name from a governmental entity;

- (7) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
  - (8) any other form of identification prescribed by the secretary of state.
  - Tex. Elec. Code Ann. § 63.0101 (2004).
- **State or federal elections?**
    - All elections.
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - With no voter registration certificate and no identification, the voter must vote provisionally. Tex. Elec. Code Ann. § 63.008 (2004); Tex. Elec. Code Ann. § 63.0011 (2004).
    - First time voters without identification must vote provisionally too.
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - Execute affidavit that he is a registered voter and is eligible to vote. Tex. Elec. Code Ann. § 63.0011 (2004).
  - **Challenge available at polls?**
    - All voters may challenge registration. Tex. Elec. Code Ann. § 16.091 (2004).
    - Poll challengers permitted at the polls, but they may only suggest that an irregularity has occurred to election officials. Tex. Elec. Code Ann. § 33.056 (2004).

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 6, 2005  
**RE:** States for ID requirements chart: Utah

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### Utah

#### Summary:

Utah requires either proof of identity or proof of residence for first time voters who mailed their registration. Utah Code Ann. § 20A-3-104 (2005); Utah Code Ann. § 20A-2-202 (2005). This may be provided either at registration or at the polls. Utah Code Ann. § 20A-2-202 (2005). Without identification, the voter may vote a provisional ballot. Utah Code Ann. § 20A-3-104 (2005).

All other voters must announce their name and, if requested, their address prior to voting. *Id.* If the election official does not know the voter, he *may* request identification (proof of residence or identity) or that the voter be identified by another voter. *Id.*

There are two pending bills related to voter identification. SB 67 would require voters to present one form of identification with their name, address, and photo or two forms of identification with their name and address. SB 67, 56<sup>th</sup> Legis., 2005 Gen. Sess. (Utah 2005). The Senate and House have each passed different versions of this bill. SB 267 would allow election day registration, which may or may not affect provisional balloting (some states with election day registration do not have provisional balloting).

- **Statutes:** Utah Code Ann. § 20A-3-104 (2005) & Utah Code Ann. § 20A-2-202 (2005).
  - **Passed:**
    - § 20A-3-104 – 1953, reenacted in 1993; HAVA compliant section added in 2003.
    - § 20A-2-202 – 1953, reenacted in 1993; HAVA compliant section added in 2003.
- **Session law/recent legislation passed:** none significant to voter identification.
- **Pending legislation:**
  - SB 67, 56<sup>th</sup> Leg., 2005 Gen. Sess. (Utah 2005): voter must present one form of identification with name, current address, and photo of voter or two forms of identification with name and current address. [2/25/05 passed Senate, failed House, 3/2/05 sent back to Senate]
  - SB 267, 56<sup>th</sup> Leg., 2005 Gen. Sess. (Utah 2005): to allow election day registration. [2/24/05 second reading]
- **Case law (from annotations):** none
- **Administrative regulations:** none

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- **What the law requires:**
  - **Is ID required?**
    - **For first time mail in registrants:**
      - Proof of identity or residence required. Utah Code Ann. § 20A-3-104 (2005); Utah Code Ann. § 20A-2-202 (2005).
    - **At polls/all voters:**
      - Must announce his/her name and, if requested, his/her address. If the election official does not know the voter and has reason to doubt the voter's identity, the official may request identification or have the voter identified by another registered voter. Utah Code Ann. § 20A-3-104 (2005).
  - **First time voters or all?**
    - Identification is only *required* of first time voters. It may be requested of all voters. Utah Code Ann. § 20A-3-104 (2005).
  - **When?**
    - Either at registration or at the polls. Utah Code Ann. § 20A-2-202 (2005).
  - **What types of ID?**
    - Either proof of identification or proof of residence satisfies requirement. Utah Code Ann. § 20A-2-202 (2005).
    - Proof of identity: photo identification that establishes identity (such as driver's license or identification card). Utah Code Ann. § 20A-1-102 (2005).
    - Proof of residence: some official document or form that establishes a person's residence (such as driver's license or utility bill). Utah Code Ann. § 20A-1-102 (2005).
    - Utah Voter Information Pamphlet lists driver's license, state identification card, passport, current utility bill, government check, paycheck, and other document that shows name and current address as acceptable identification. Utah Voter Information Pamphlet, 74, [http://elections.utah.gov/Voter%20Information%20Pamphlet\\_web.pdf](http://elections.utah.gov/Voter%20Information%20Pamphlet_web.pdf).
  - **State or federal elections?**
    - Both. Utah Code Ann. § 20A-3-104 (2005).
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Provisional Ballot. Utah Code Ann. § 20A-3-104 (2005).
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - None. Utah Code Ann. § 20A-3-105.5 (2005).
  - **Challenge available at polls?**
    - Yes. Utah Code Ann. § 20A-3-202 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 6, 2005  
**RE:** States for ID requirements chart: Vermont

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### Vermont

#### Summary:

In Vermont, voters who are voting for the first time and registered by mail must present identification prior to voting. Vt. Stat. Ann. tit. 17, § 2563 (2004). This identification may be presented at any time prior to voting, including at registration. *Id.* The types of identification permitted are the same as the types permitted under HAVA. *Id.* Without identification, a voter may vote a provisional ballot. *Id.* This requires completing an attestation, and the voter may only vote for candidates for federal office. Vt. Stat. Ann. tit. 17, § 2556 (2004).

All voters must state their name and, if requested, their address prior to voting. Vt. Stat. Ann. tit. 17, § 2563 (2004). No identification is required of voters besides the requirement for first time voters who registered by mail. *Id.*

There are no pending bills or recent bills passed concerning voter identification.

- **Statutes:** Vt. Stat. Ann. tit. 17, § 2563 (2004).
  - **Passed:**
    - § 2563 – 2003 identification requirement for first time voters added
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - none
- **Case law (from annotations):** none
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **First time voters who registered by mail:**
      - Identification required for first time voters who registered by mail. Vt. Stat. Ann. tit. 17, § 2563 (2004).
    - **At polls/all voters:**
      - State name and, if requested, address. No identification required. Vt. Stat. Ann. tit. 17, § 2563 (2004).
  - **First time voters or all?**
    - First time voters who registered by mail only. Vt. Stat. Ann. tit. 17, § 2563 (2004).
  - **When?**
    - Either registration, some time prior to the election, or at the polls. Vt. Stat. Ann. tit. 17, § 2563 (2004).

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- **What types of ID?**
  - (1) A valid photo identification; (2) copy of a current utility bill; (3) copy of a current bank statement; (4) or copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. Vt. Stat. Ann. tit. 17, § 2563 (2004).
- **State or federal elections?**
  - Seems to be all elections. However, when a voter votes provisionally, he may only vote for federal candidates. Vt. Stat. Ann. tit. 17, § 2563 (2004); Vt. Stat. Ann. tit. 17, § 2556 (2004).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Vt. Stat. Ann. tit. 17, § 2563 (2004).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit & vote for federal candidates only. Vt. Stat. Ann. tit. 17, § 2556 (2004).
- **Challenge available at polls?**
  - Challenge permitted by challengers appointed by a political party, candidate, or issue group. Vt. Stat. Ann. tit. 17, § 2564 (2004).



## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 7, 2005  
**RE:** States for ID requirements chart: Washington

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### Washington

#### **Summary:**

Recently, Washington passed two bills concerning voter identification. 2005 Wash. Laws 243; 2005 Wash. Laws 246. 2005 Wash. Laws 243 is effective July 24, 2005, and 2005 Wash. Laws 246 is effective January 1, 2006. These new laws require all voters to present identification at the polls in the form of a photo identification, bank statement, paycheck, government check, or other government document. 2005 Wash. Laws 243. They also require first time voters who register by mail (regardless of voting method) to provide identification (forms similar to above list) prior to voting at the polls. 2005 Wash. Laws 246.

Until the new laws take effect, only first time voters who register by mail are required to present identification. All other voters must merely state their name and sign the precinct record. Wash. Rev. Code § 29A.44.201 (2005); Wash. Admin. Code § 434-253-040 (2005).

There are several bills pending in the legislature. All of these bills require photo identification.

#### • **Statutes:**

- 2005 Wash. Laws 243 – new voter identification law for all voters at the polls (effective 7/24/05)
- 2005 Wash. Laws 246 – voter identification law applying to first time voters who registered by mail only (effective 1/1/06)
- Wash. Rev. Code § 29A.44.201 (2005) – current law until 7/24/05
- **Passed:**
  - § 29A.44.201 – 2004
  - 2005 Wash. Laws 243 (SB 5499) – 2005
  - 2005 Wash. Laws 246 (SB 5743) – 2005

#### • **Session law/recent legislation passed:**

- 2005 Wash. Laws 243, sec. 7: all voters required to present identification at the polls (forms: voter registration card, any current and valid government-issued photo identification, driver's license, state identification card, passport, tribal identification card, military ID card, or a copy of a current utility bill, bank statement, paycheck, government check or other government document) [signed by governor 5/3/05, effective 7/24/05]
  - SB 5499, 59<sup>th</sup> Leg., 2005 Reg. Sess. (Wash. 2005)

- 2005 Wash. Laws 246, sec. 7: any voter who registered by mail and indicated that he did not have a social security number, driver's license, or state identification card must provide identification prior to voting (this requirement includes voters voting by mail and at the polls) [signed by governor 5/3/05, effective 1/1/06]
  - SB 5743, 59<sup>th</sup> Leg., 2005 Reg. Sess. (Wash. 2005)
- **Pending legislation:**
  - HB 2158, 59<sup>th</sup> Leg., 2005 Reg. Sess. (Wash. 2005): require identification containing photo and signature at polls. [2/28/05 committee hearing]
  - SB 6075, 59<sup>th</sup> Leg., 2005 Reg. Sess. (Wash. 2005): require identification containing photo and signature at polls. [3/3/05 introduced, referred to committee]
  - HB 2226, 59<sup>th</sup> Leg., 2005 Reg. Sess. (Wash. 2005): require identification containing photo and signature at polls (only driver's license, state identification card, or passport acceptable). [2/24/05 introduced, referred to committee]
  - SB 5400, 59<sup>th</sup> Leg., 2005 Reg. Sess. (Wash. 2005): require voters to show photo identification and registration verification. [1/24/05 introduced, referred to committee]
- **Case law (from annotations):** none
- **Administrative regulations:**
  - Wash. Admin. Code § 434-253-040 (2005): verification of voter's name.
- **What the law requires:**
  - **Is ID required?**
    - **First time voters who registered by mail:**
      - Now: Must provide identification prior to voting regardless of whether voter is voting at the polls or by mail. 2005 Wash. Laws 246, sec. 7 (effective 1/1/06).
      - Prior to new law: HAVA only.
    - **At polls - all voters:**
      - Now: All voters must provide identification prior to signing poll book. 2005 Wash. Laws 243, sec. 7.
      - Prior to new law: Announce name and sign record only. Wash. Rev. Code § 29A.44.201 (2005); Wash. Admin. Code § 434-253-040 (2005).
  - **First time voters or all?**
    - All voters have a similar identification requirement. 2005 Wash. Laws 243, sec. 7; 2005 Wash. Laws 246, sec. 7.
  - **When?**
    - At polls. 2005 Wash. Laws 243, sec. 7; 2005 Wash. Laws 246, sec. 7.
  - **What types of ID? [requirements for all voters and first time voters are similar]**
    - **At polls – all voters:**
      - Current and valid photo identification, including: voter registration card, any current and valid government-issued

photo identification, driver's license, state identification card, passport, tribal identification card, and military ID card.

- Other identification, including: copy of current utility bill, bank statement, government check, paycheck, and any other government document.
- 2005 Wash. Laws 243, sec. 7.
- **First time voters who registered by mail:**
  - (a) Valid photo identification;
  - (b) A valid enrollment card of a federally recognized Indian tribe in Washington state;
  - (c) A copy of a current utility bill;
  - (d) A current bank statement;
  - (e) A copy of a current government check;
  - (f) A copy of a current paycheck; or
  - (g) A government document that shows both the name and address of the voter.
  - 2005 Wash. Laws 246, sec. 7.
- **State or federal elections?**
  - Both. 2005 Wash. Laws 243, sec. 7; 2005 Wash. Laws 246, sec. 7.
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional Ballot. 2005 Wash. Laws 243, sec. 7; 2005 Wash. Laws 246, sec. 7.
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Sign affidavit. 2005 Wash. Laws 243, sec. 6.
- **Challenge available at polls?**
  - No, only election officials may challenge at the polls. Wash. Rev. Code § 29A.44.201 (2005).
- **Miscellaneous:**
  - Has vote by mail for precincts with less than 200 active registered voters, and Washington recently passed a law permitting vote by mail for any precinct with permission of the county. Wash. Rev. Code § 29A.48.010 (2005); 2005 Wash. Laws 241.

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## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 7, 2005  
**RE:** States for ID requirements chart: West Virginia

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### West Virginia

#### Summary:

The identification requirements under West Virginia law are the same as required under HAVA. W. Va. Code § 3-2-10 (2005). These requirements apply to local, state, and federal elections. Without identification, a voter is permitted to vote a provisional ballot. *Id.*

While West Virginia allows voters to register by mail with only the HAVA requirements for identification, voters who register in person are required to present identification and proof of age. W. Va. Code § 3-2-7 (b) (2005).

No recent laws passed or bills pending.

- **Statutes:** W. Va. Code § 3-2-10 (2005); W. Va. Code § 3-1-34 (2005).
  - **Passed:**
    - § 3-2-10 – 2003
    - § 3-1-34 – 1981
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - none
- **Case law (from annotations):**
  - *State ex rel. Bumgardner v. Mills*, 53 S.E.2d 416 (W. Va. 1949): The purpose of the legislature in enacting the provisions of this section (§ 3-1-34) requiring the signature of the clerk on the back of the ballot was to guard against and prevent fraud in an election.
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For first time voters who registered by mail:**
      - Any voter who registers by mail who has not yet voted in the State (if statewide system set up) or in the county (prior to statewide system) must provide identification. W. Va. Code § 3-2-10 (g) (2005).
    - **Registration:**
      - For voters who register in person, they are required to present valid identification and proof of age. W. Va. Code § 3-2-7 (b) (2005).
    - **At polls/all voters:**
      - State name and sign poll book. W. Va. Code § 3-1-34 (a) (2005).

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- **First time voters or all?**
  - Only first time voters who register by mail who have not voted in the State before. W. Va. Code § 3-2-10 (g) (2005).
- **When?**
  - Anytime prior to voting. W. Va. Code § 3-2-10 (g) & (i) (2005).
- **What types of ID?**
  - A current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. W. Va. Code § 3-2-10 (g) (2005).
- **State or federal elections?**
  - Both. W. Va. Code § 3-2-10 (g) (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. W. Va. Code § 3-2-10 (g) & (h) (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Looks like none. W. Va. Code § 3-1-41 (2005).
- **Challenge available at polls?**
  - Yes. W. Va. Code § 3-1-34 (d) (2005); W. Va. Code § 3-1-41 (2005).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 7, 2005  
**RE:** States for ID requirements chart: Wisconsin

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### Wisconsin

#### Summary:

Wisconsin does not require identification beyond HAVA for voters who registered by mail and are voting for the first time in a national election. Wis. Stat. § 6.36 (2)(c)(2) (2004). It also only requires identification in national elections, not for state and local elections. *Id.* The identification forms are the same as permitted under HAVA. Wis. Stat. § 5.02 (6m) (2004). Without identification, a voter may vote a provisional ballot; the provisional ballot only counts if the voter brings identification to the clerk's office by 4 p.m. the day after election day. Wis. Stat. § 6.97 (2004); Wisconsin State Elections Board, Voter Information: Frequently Asked Questions, [http://elections.state.wi.us/faq\\_detail.asp?faqid=142&fid=27&fname=&linkid=](http://elections.state.wi.us/faq_detail.asp?faqid=142&fid=27&fname=&linkid=).

Wisconsin has in-person late registration and election day registration. Wis. Stat. § 6.29 (2004). This requires proof of residence (many forms acceptable) or an affidavit as to the residence of the voter by another registered voter. *Id.* All other voters must only provide their name and address prior to voting. Wis. Stat. § 6.79 (2)(c), (3) (2004).

There are several bills pending which would require photo identification of all voters prior to voting. One of these bills passed both houses and was vetoed by the governor in May. Another similar bill has passed both houses recently.

- **Statutes:** Wis. Stat. § 6.79 (2004); Wis. Stat. § 6.36 (2004)
  - **Passed:**
    - § 6.36 – 2003
    - § 6.79 – since at least 1989, probably since 1965
- **Session law/recent legislation passed:** none
- **Pending legislation:**
  - AB 63, 97<sup>th</sup> Legis. Sess., Reg. Sess. (Wis. 2005): require all voters to show a WI driver's license, state identification card, or military identification card. [5/2/05 vetoed, 5/3/05 failed to override veto]
  - SB 42, 97<sup>th</sup> Legis. Sess., Reg. Sess. (Wis. 2005): require all voters to show a WI driver's license, state identification card, or military identification card; provisional ballot to those without identification; identification cards free. [6/15/05 passed Senate, 6/23/05 passed Assembly]
  - AJR 36: requires photo identification to vote at the polls. [5/3/05 introduced, 5/31/05 to committee]
- **Case law (from annotations):**
  - *State ex rel. Hopkins v. Olin* 23 Wis. 309 (Wis. 1868): Proof, by residents of a town or village, that no such persons as some whose names are on the poll

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list as having voted at the election, were known by the witnesses to have resided in such town or village, will authorize the jury to find that such names are fictitious, or belong to persons who were not legal voters in such town or district, unless other proof to the contrary is given.

- *State v. Trask* 115 N.W. 823 (Wis. 1908): The provisions of St.1898, §§ 23, 61 that one whose name was not on the registry as completed could not vote except on presenting an affidavit showing certain facts as to his qualification, was not unreasonable or inconsistent with his right to vote, as secured by the Constitution.
- **Administrative regulations:** none
- **What the law requires:**
  - **Is ID required?**
    - **For first time voters who registered by mail:**
      - Voters who registered by mail and have not yet voted in an election for national office. Wis. Stat. § 6.36 (2)(c)(2) (2004).
    - **At polls/all voters:**
      - All other voters must provide their name and address prior to voting. Wis. Stat. § 6.79 (3) (2004).
    - **Registration:**
      - Election day or in-person late registration: requires proof of residence – see “miscellaneous” below. Wis. Stat. § 6.29 (2004).
  - **First time voters or all?**
    - Just first time voters and just federal elections. Wis. Stat. § 6.36 (2)(c)(2) (2004).
      - Currently, the requirement applies to voters voting for the first time in the county; on Jan. 1, the requirement will apply to voters voting for the first time in the State. Wis. Stat. § 6.36 (2)(c)(2) (2004).
  - **When?**
    - At polls. Wis. Stat. § 6.36 (2)(c)(2) (2004).
  - **What types of ID?**
    - Current and valid photo identification or a copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the elector. Wis. Stat. § 5.02 (6m) (2004).
  - **State or federal elections?**
    - “Elections for national office.” Wis. Stat. § 6.36 (2)(c)(2) (2004).
  - **Consequences of having no ID (provisional ballot v. regular ballot?)**
    - Provisional ballot. Wis. Stat. § 6.97 (2004).
  - **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
    - Provide identification in the municipal clerk’s office by 4 p.m. the day after election day. Wisconsin State Elections Board, Voter Information: Frequently Asked Questions, [http://elections.state.wi.us/faq\\_detail.asp?faqid=142&fid=27&fname=&linkid=](http://elections.state.wi.us/faq_detail.asp?faqid=142&fid=27&fname=&linkid=)



- **Challenge available at polls?**
  - Yes. Wis. Stat. § 6.925 (2004); Wis. Admin. Code § 9.02 (2005).
- **Miscellaneous:**
  - Registration not required in all municipalities.
  - Has late registration and election day registration, which requires identification. Wis. Stat. § 6.29 (2004).
    - Affidavit that voter is qualified to the best of his knowledge. Wis. Stat. § 6.55 (2004).
    - Identification required:
      - Proof of residence OR affidavit as to the voter's residence made by another registered voter and proof of residence for that voter. Wis. Stat. § 6.29 (2004).
        - Proof of residence: must include voter's name and current residence address (WI driver's license, state identification card, other identification card issued by WI or employer, credit card, library card, check cashing card, tax bill, lease, tuition bill, student identification card, pilot's license, or utility bill). Wis. Stat. § 6.55 (7) (2004).

## MEMORANDUM

**TO:** Sara Sampson  
**FROM:** Jamie LaPlante  
**DATE:** July 8, 2005  
**RE:** States for ID requirements chart: Wyoming

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### Wyoming

#### **Summary:**

Wyoming does not require identification beyond HAVA for voters who registered by mail and are voting for the first time in a Wyoming federal election. Wyo. Stat. Ann. § 22-3-118 (b) (2005). It also only requires identification in federal elections, not for state and local elections. *Id.* The identification forms are the same as permitted under HAVA. *Id.* Without identification, a voter may sign an affidavit and vote a provisional ballot; the provisional ballot only counts if the voter brings identification to the clerk's office the day after election day. Wyo. Stat. Ann. § 22-3-118 (2005); Wyo. Stat. Ann. § 22-15-105 (2005).

There are no pending bills concerning voter identification. However, Wyoming recently passed a bill adding tribal identifications to the list of acceptable identifications. 2005 Wyo. Sess. Laws 130.

- **Statutes:** Wyo. Stat. Ann. § 22-3-118 (2005).
  - **Passed:**
    - § 22-3-118 – 2004
- **Session law/recent legislation passed:**
  - 2005 Wyo. Sess. Laws 130 (HB 325): adds tribal identification as an acceptable identification. [2/25/05 signed by governor – effective 7/1/05]
- **Pending legislation:** none
- **Case law (from annotations):** none
- **Administrative regulations:** Secretary of State Regulation Issued October 1, 2004.
- **What the law requires:**
  - **Is ID required?**
    - **First time voters who register by mail:**
      - First time voters who register by mail and have not previously voted in a Wyoming federal election are required to provide identification prior to voting. Wyo. Stat. Ann. § 22-3-118 (b) (2005).
  - **First time voters or all?**
    - Just first time voters. Wyo. Stat. Ann. § 22-3-118 (2005).
  - **When?**
    - Prior to voting – anytime. Wyo. Stat. Ann. § 22-3-118 (2005).
  - **What types of ID?**
    - Current & valid photo identification, utility bill, bank statement, paycheck, government check, or other government document with the voter's name and address. Wyo. Stat. Ann. § 22-3-118 (b) (2005).

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- The Secretary of State promulgated guidelines further defining identification for the purposes of voting or registration and added these specific forms:
  - Passport
  - Driver's license or state identification card (any state)
  - Identification card issued by Federal Government
  - Military identification card
  - Certificate of citizenship
  - Certificate of naturalization
  - Military draft record
  - Voter registration card from another State or County
  - Certificate of birth abroad issued by Department of State
  - Birth certificate
  - Any other form of identification issued by official agency of the U.S. or a State
  - Secretary of State Regulation Issued October 1, 2004.
- **State or federal elections?**
  - Federal only. Wyo. Stat. Ann. § 22-3-118 (b) (2005).
- **Consequences of having no ID (provisional ballot v. regular ballot?)**
  - Provisional ballot. Wyo. Stat. Ann. § 22-3-118 (2005).
- **Consequences of having no ID (affidavit, bring ID later, none, recite DOB & address)**
  - Affidavit. Wyo. Stat. Ann. § 22-15-105 (2005).

AND

  - Bring identification the day after the election in order for vote to count. Wyo. Stat. Ann. § 22-3-118 (2005); Wyo. Stat. Ann. § 22-15-105 (2005).
- **Challenge available at polls?**
  - Not by poll watchers or other voters. Only election judges may challenge. Wyo. Stat. Ann. § 22-15-101 (2005); Wyo. Stat. Ann. § 22-15-105 (2005); Wyo. Stat. Ann. § 22-15-109 (2005).

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Jeannie Layson /EAC/GOV  
03/30/2007 11:57 AM

To tim.vercellotti@rutgers.edu  
cc john.weingart@rutgers.edu  
bcc  
Subject press release

Tim,  
Per our conversation, the press release is attached. We will also post your entire report on our website.



This go live in about 45 min. VoterID release 3-30-07.doc Again, please don't hesitate to call if you have any questions, and I will keep in the loop regarding media inquiries.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

030306



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC to Launch Comprehensive Study of Voter ID Laws**

For Immediate Release  
March 30, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**WASHINGTON** – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research it received in a report, which focused on only one election cycle, was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public.

The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, are available at [www.eac.gov](http://www.eac.gov). The Commission's statement regarding its decision is attached.

“After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle,” said EAC Chair Donetta Davidson. “The Commission and our contractor agree that the research conducted for EAC raises more questions than provides answers.”

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by the contractor as well as additional data from the states to develop this baseline.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.
- Study how voter identification provisions that have been in place for two or more federal elections have impacted voter turnout, voter registration figures, and fraud.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

# **EAC Statement on Study of Voter Identification Requirements**

## **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics (“Contractor”) to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor’s testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC’s website, [www.eac.gov](http://www.eac.gov).

## **EAC Declines to Adopt Draft Report**

EAC finds the Contractor’s summary of States’ voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission’s efforts to study the possible impact of voter identification requirements.

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<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

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<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.



- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Jeannie Layson /EAC/GOV  
03/29/2007 03:14 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject I've been sending stuff to your personal email address!

Sorry about that! Here's what I sent out earlier:

Commissioners,

Based upon the revised tally vote language, I have made edits to the press release and to the Q&A. Please let me know if you have any edits. I plan to release this tomorrow if the tally vote is completed by then. Also, please pay special attention to the following answer I have composed, which is in the Q&A document. I will notify you before issuing the press release.

**Q: What are your specific objections/concerns with the methodologies utilized by Eagleton?**

A: First of all, we agree with the contractor that we should examine more than one federal election. Regarding the methodologies, the contractor conducted two analyses that had different outcomes. The first analysis showed no statistically significant correlations. The second analysis, based on statistics from the Current Population Survey, showed some evidence of a correlation. Also, the categorization of voter identification requirements included classifications that do not require identification documentation, such as "state your name." The bottom line is that the research produced more questions than answers, and that's why EAC is expanding its efforts to examine this important issue.



EAGLETONQ&A.doc VoterID release 3-30-07.doc

Jeannie Layson  
U.S. Election Assistance Commission  
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Washington, DC 20005  
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030312

## **OVERALL MESSAGE**

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The preliminary research focused exclusively on the 2004 election, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

## **Q&A**

### **Q: Why not release the draft fraud report, too?**

A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

### **Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?**

A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

### **Q: What are your specific objections/concerns with the methodologies utilized by Eagleton?**

A: First of all, we agree with the contractor that we should examine more than one federal election. Regarding the methodologies, the contractor conducted two analyses that had different outcomes. The first analysis showed no statistically significant correlations. The second analysis, based on statistics from the Current Population Survey, showed some evidence of a correlation. Also, the categorization of voter identification requirements included classifications that do not require identification documentation, such as "state your name." The bottom line is that the research produced more questions than answers, and that's why EAC is expanding its efforts to examine this important issue.

### **Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?**

A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

**Q: During the course of the contract, did you ever express these concerns with Eagleton?**

A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

**Q: You spent more than \$500,000 for a report the Commission doesn't think should be adopted – so basically you're flushing a lot of money down the drain. Is this a wise use of taxpayer dollars?**

A: There is value in what Eagleton provided, and this included work they did for us regarding provisional voting. As a result of the research on provisional voting, EAC issued a set of best practices last fall. The voter ID data will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

**Q: If you were not satisfied with the final product, why did you pay for it?**

A: We adhered to the terms of the contract.

**Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?**

A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

## **TRANSITION PHRASES**

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

### ***Overall Message***

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The preliminary research focused exclusively on the 2004 election, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

### ***Bridge/Transition Phrases***

- What's really important here...
- We are focused on moving forward, not going back...
- The bottom line is...
- The point is...
- We have a responsibility to...
- I'll let others speak to that, but let me tell you what's important to EAC...
- Everyone agrees that...



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC to Launch Comprehensive Study of Voter ID Laws**

For Immediate Release  
March 30, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**WASHINGTON** – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research focusing on only one election cycle was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public. The information is available at [www.eac.gov](http://www.eac.gov), and the Commission's statement regarding its decision is attached.

“After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle,” said EAC Chair Donetta Davidson. “The Commission and our contractor agree that the research raises more questions than provides answers.”

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

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# EAC Statement on Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics (“Contractor”) to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor’s testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC’s website, [www.eac.gov](http://www.eac.gov).

## EAC Declines to Adopt Draft Report

EAC finds the Contractor’s summary of States’ voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission’s efforts to study the possible impact of voter identification requirements.

<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.



However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

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<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

AT

Jeannie Layson /EAC/GOV  
03/29/2007 02:31 PM

To PFessler@npr.org  
cc  
bcc  
Subject your questions

Pam,

Per your question, Congressman Hinchey requested that the following be sent to the House Appropriations Committee, Subcommittee on Financial Services and General Government: EAC's assessment report on CIBER, Inc., the draft report submitted to EAC regarding voter fraud and intimidation, and the draft report submitted to EAC concerning voter identification. The assessment report on CIBER, Inc. and the final culmination of the voter fraud and intimidation research - Election Crimes: An Initial Review and Recommendations for Further Study – are available at [www.eac.gov](http://www.eac.gov), but we also provided hard copies to the committee.

Regarding the voter ID research project, as I mentioned at our Feb. public meeting EAC Chair Donetta Davidson requested that staff review the initial research provided by Eagleton and produce a final report, which would include recommendations for further study on this subject. However, we provided the Committee the initial information Eagleton provided to EAC.

Regarding the voter fraud and intimidation research, we provided the Committee EAC's final report and all of the information provided by the consultants. At a May 2006 public meeting of our Standards Board and Board of Advisors, the EAC project manager for this research presented a staff update on the project. Go here to view the public meeting agenda, page 3. The update the project manager gave at this public meeting has been made available to anyone who asked for it, and I've attached it for your review. The final culmination of this project can be found here. Go to page 24, where you will find links to attachments, which provide the data reviewed by the consultants. The commissioners adopted this report, including four recommendations for further study at a public meeting in Dec. 2006. The final report includes all of the recommendations put forth by the consultants as well the research they provided. (Consultants provided 16 suggestions for further study. See pages 16-22.)

Please let me know if you would like to speak with EAC Chair Davidson if you need sound or something for attribution. She'd also be glad to discuss our approach for these research projects. Again, my direct number is 202-566-3103 or you can reach me on my cell after 5:30 at 202-243-9476.



VF-VI Study Status 5-17-06.pdf  
Jeannie Layson  
U.S. Election Assistance Commission  
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030321



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

030322

## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.



- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

### NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

#### Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate;  
and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio, and Pennsylvania.

#### **"Dead Voters and Multiple Voting"**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**


Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

Juliet E. Hodgkins/EAC/GOV  
03/29/2007 02:15 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: is this okay for NPR? 

Fine -- except for the typo in the third paragraph.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 03/29/2007 02:01 PM EDT  
**To:** Juliet Hodgkins  
**Subject:** is this okay for NPR?

Pam,

Per your question, Congressman Hinchey requested three documents be sent to the House Appropriations Committee Subcommittee on Financial Services and General Government: EAC's assessment report on CIBER, Inc., the draft report submitted to EAC regarding voter fraud and intimidation, and the draft report submitted to EAC concerning voter identification. The assessment report on CIBER, Inc. and the final culmination of the voter fraud and intimidation research – Election Crimes: An Initial Review and Recommendations for Further Study -- are available at [www.eac.gov](http://www.eac.gov), but we also provided hard copies to the committee.

Regarding the voter ID research project, as I mentioned at our Feb. public meeting EAC Chair Donetta Davidson requested that staff review the initial research provided by Eagleton and produce a final report, which would include recommendations for further study on this subject. However, we provided the Committee the initial information Eagleton provided to EAC.

Regarding the voter fraud and intimidation research, we provided the Committee EAC's final report and all of the information provided by the consultants. At a May 2006 public meeting of our Standards Board and Board of Advisors, the EAC project manager for this research presented a staff update on the project. Go here to view the public meeting agenda, page 3. The update the project manager gave at this public meeting has been made available to anyone who asked for it. The final culmination of this project can be found here. Go to page 24, where you will find links to attachments, which provide the data reviewed by the consultants. The commissioners adopted this report, including four recommendations for further study at a public meeting in Dec. 2006. The final report includes all of the recommendations put forth by the consultants as well the research they provided. (Consultants provided 16 suggestions for further study. See pages 16-22.)

Please let me know if you would like to speak with EAC Chair Davidson if you need something for attribution. She'd also be glad to discuss our approach to both of these research projects. Again, my direct number is 202-566-3103 or

030334



you can reach me on my cell after 5:30 at 202-243-9476.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030335

Juliet E. Hodgkins/EAC/GOV  
03/29/2007 11:53 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc

Subject Re: media request 

History:  This message has been replied to.

I would prefer that we just list them for her: Ciber assessment reports, draft voter fraud and intimidation report and draft voter ID report.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 03/29/2007 11:43 AM EDT  
**To:** Juliet Hodgkins; Thomas Wilkey  
**Subject:** media request

Pam Fessler of NPR called, wanting to know if we had submitted the docs requested by Congressman Hinchey. I said yes, and she wanted to know what they asked for, specifically regarding the voter fraud report. I thought the easiest thing to do would be to send her the letter we sent to the committee. What do you think about that?

Jeannie Layson  
U.S. Election Assistance Commission  
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Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030338

Jeannie Layson /EAC/GOV  
03/22/2007 09:38 AM

To jennifer.roseutley@bm.com, mary.crawford@bm.com  
cc  
bcc  
Subject voter ID info

Here's the latest press release and the document they are actually voting on. Jennifer -- it would be great if you would work with me to come up with a roll out strategy. Nothing elaborate, as this may happen rather quickly. Also, I am working on some Q&A.



VoterID release (lhunter edits.doc Voter ID edited 32107- with changed footnote.doc

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030337



U.S. ELECTION ASSISTANCE COMMISSION  
 1225 New York Ave. NW – Suite 1100  
 Washington, DC 20005

## EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release  
 March 23, 2007

Contact: Jeannie Layson  
 Bryan Whitener  
 (202) 566-3100

Deleted: Releases Initial Research

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive, multi-year study focused on voter identification laws after concluding that initial research covering only one election cycle was not sufficient to draw any conclusions. The Commission declined to adopt a report based on the initial research, but to release all of the information to the public. The information is available at [www.eac.gov](http://www.eac.gov).

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“Many new voter identification laws have been enacted recently, and the Commission began working to determine the impact of these new laws,” said EAC Chair Donetta Davidson. “However, after careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle. The bottom line is that the research raises more questions than provides answers.”

Comment [C1]: I would add some of the language from the other document on this topic that we already approved. The action we took was to not adopt the report due to our concerns but to release all info to the public. The Contractor and the EAC agree that the report raises more questions than provides answers. Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

Deleted: declined to adopt the report.

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EAC's future research on this topic will be expanded to include more than one election cycle, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC comprehensive research approach will undertake the following activities:

Deleted: issue a report based upon the initial research conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, but voted to make all of the research available.

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

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030336

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

RA

# EAC Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics (“Contractor”) to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor’s testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC’s website, [www.eac.gov](http://www.eac.gov).

## EAC Declines to Adopt Draft Report

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<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

#### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

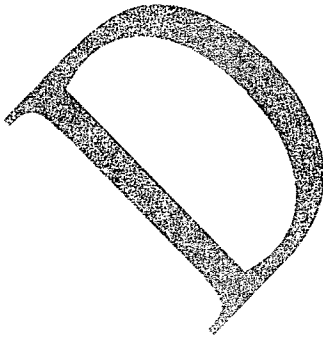
EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

---

<sup>4</sup> See Transcript of EAC Public Meeting, February 8, 2007, page 109.

- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.





Jeannie Layson /EAC/GOV  
03/21/2007 03:48 PM

To ddavidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
klynndyson@eac.gov, Bryan Whitener/EAC/GOV@EAC  
bcc mary.crawford@bm.com; jennifer.roseutley@bm.com  
Subject FOR YOUR APPROVAL: VoterID Draft Press Release

Commissioners,

Attached is a draft press release about Commission actions surrounding the voter ID research. Please get your comments/edits back to me by Friday morning, and let me know if you have any questions. I will coordinate with Karen and Julie regarding its release, and tomorrow I will present you with a recommended strategy for the announcement of your decision. (Of course, it will not go out before the delivery of a related letter.)



VoterIDPressReleaseDRAFT.doc

Jeannie Layson  
U.S. Election Assistance Commission  
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Phone: 202-566-3100  
www.eac.gov

030348



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC to Launch Comprehensive Study of Voter ID Laws** *Releases Initial Research*

For Immediate Release  
March 23, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**WASHINGTON** – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive, multi-year study focused on voter identification laws after concluding that researching only one election cycle was not sufficient to draw any conclusions. The Commission declined to issue a report based upon the initial research conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, but voted to make all of the research available. The information is available at [www.eac.gov](http://www.eac.gov).

“Many new voter identification laws have been enacted recently, and the Commission began working to determine the impact of these new laws,” said EAC Chair Donetta Davidson. “However, after careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle.”

EAC’s strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission’s February 8, 2007 public meeting. For more information about the public meeting agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

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- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC’s next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

030344

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
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###

Jeannie Layson /EAC/GOV  
03/21/2007 03:48 PM

To ddavidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
klynndyson@eac.gov, Bryan Whitener/EAC/GOV@EAC  
bcc mary.crawford@bm.com; jennifer.roseutley@bm.com  
Subject FOR YOUR APPROVAL: VoterID Draft Press Release

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VoterIDPressReleaseDRAFT.doc

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030346



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Washington, DC 20005

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For Immediate Release  
March 23, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

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030347

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###

Jeannie Layson /EAC/GOV  
03/21/2007 12:14 PM

To jthompson@eac.gov, klyndyson@eac.gov  
cc  
bcc  
Subject voter ID press release

Let me know what you think of this...



VoterDreport.doc  
Jeannie Layson  
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030349



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1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **EAC to Launch Comprehensive Study of Voter ID Laws** *Releases Initial Research*

For Immediate Release  
March 23, 2007

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**WASHINGTON** – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive, multi-year study on the impact of voter identification laws in the states based upon initial efforts that focused on the 2004 election cycle. The Commission also voted to provide all of the initial research conducted by its consultant, Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics. The information is available at [www.eac.gov](http://www.eac.gov).

“Many new voter identification laws have been enacted recently, and the Commission began working to determine the impact of these new laws,” said EAC Chair Donetta Davidson. “However, after careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle.”

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###

Jeannie Layson /EAC/GOV  
03/15/2007 01:40 PM

To bwhitener@eac.gov  
cc  
bcc  
Subject for electionline

This incorporates Julie's suggestions. I haven't heard from Peg.


The document that was requested by the subcommittee is considered predecisional under the Freedom of Information Act (FOIA), but of course we will provide it to the subcommittee because they are exempt from FOIA. However, the commission adopted a final report on election crimes at a Dec. 2006 public meeting. The final report was based on the research provided by the consultants and additional information gathered by EAC staff. It is available on our website -- go here. The report includes all of the data reviewed by the consultants. (See links on page 24.) It also includes all of the recommendations for further study that the consultants put forth. Ultimately, the commission adopted four of those recommendations.

As a small agency, EAC often works with contractors, consultants and experts to gather data and conduct research. After the commission receives the initial data or information, staff then works to incorporate this information into a final EAC report.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
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Phone: 202-566-3100  
www.eac.gov

030352

Jeannie Layson /EAC/GOV  
03/15/2007 09:26 AM

To Bryan Whitener/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
bcc  
Subject Re: Draft response - is this okay? 

Here's what I suggest. Julie & Peg... let us know if you think this is appropriate.

The document that was requested by the subcommittee is considered predecisional under the Freedom of Information Act (FOIA), but of course we will provide it to the subcommittee because they are exempt from FOIA. However, the commission adopted a final report on election crimes at a Dec. 2006 public meeting. The final report was based on the research provided by the contractors and additional information gathered by EAC staff. It is available on our website -- go here. The report includes all of the data reviewed by the contractors. (See links on page 24.) It also includes all of the recommendations for further study that the contractors put forth. Ultimately, the commission adopted four of those recommendations.

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Phone: 202-566-3100  
www.eac.gov  
Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV  
03/14/2007 04:55 PM

To Jeannie Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
cc  
Subject Draft response - is this okay?

Dan,

Just to follow up. The document that was requested by the subcommittee is predecisional. It is also covered under an exemption to FOIA -- deliberative process privilege. However, we are providing this to the congressional subcommittee because they are exempt from FOIA. Please do not hesitate to contact us should you have any questions or if we can be of assistance.

----- Forwarded by Bryan Whitener/EAC/GOV on 03/14/2007 04:50 PM -----



"Dan Seligson"  
<dseligson@electionline.org>  
03/09/2007 02:26 PM

To "Bryan Whitener" <bwhitener@eac.gov>  
cc  
Subject info request re: House Appropriations subcommittee hearing

030358

Bryan -


As I mentioned on the phone, I am seeking information as a follow up to the House Appropriations Subcommittee on Financial Services. At the hearing, Rep. Maurice Hinchey, D-N.Y., requested that the EAC submit the original version of a report written by Tova Wang and Job Serebrov. Chairwoman Davidson said she would provide the original report (I believe) within three days. Is that still the case? Will the subcommittee have the original report, as submitted by the consultants, on Monday? And if so, may we have a copy as well?

Thanks,  
Dan

Daniel Seligson  
editor  
electionline.org  
1025 F St. NW Suite 900  
Washington, DC 20004  
202-552-2039

030354

**Jeannie Layson /EAC/GOV**  
03/15/2007 09:13 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: One more time 

Just a few minor items...



Voter ID edited 31407 jl.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)  
Juliet E. Hodgkins/EAC/GOV

**Juliet E. Hodgkins/EAC/GOV**  
03/14/2007 08:14 PM

To [jlayson@eac.gov](mailto:jlayson@eac.gov)  
cc  
Subject One more time

Here is the latest consolidated version of the "statement" on Voter ID. See if you think that this captures what they were attempting to say.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Voter ID edited 31407.doc

03035E

# EAC Statement on Future Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election - November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>1</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>2</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

**Deleted:** The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.¶

## EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

**Deleted:** consideration of

**Deleted:**

<sup>1</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>2</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>3</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

**Deleted:** research  
**Deleted:** chose to employ in order to  
**Deleted:** and the potential variation in  
**Deleted:** based on the type of voter identification requirements

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**Deleted:**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be

<sup>3</sup> See EAC Public Testimony, February 8, 2007, page 109.

covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.



Jeannie Layson /EAC/GOV  
03/14/2007 09:55 AM

To "Marie Cocco" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject RE: your inquiry

No problem. Just let me know if I can be of further assistance or if you'd like to discuss this with the EAC chair.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
"Marie Cocco" [REDACTED]



"Marie Cocco"  
[REDACTED]  
03/14/2007 09:41 AM

To jlayson@eac.gov  
cc  
Subject RE: your inquiry

thanks a lot for your help and especially for your follow up call last night. it was above and beyond the call of duty.

Marie Cocco

>From: jlayson@eac.gov

>Subject: your inquiry

>Date: Tue, 13 Mar 2007 15:30:37 -0400

>

>Ms. Cocco,

>Per your questions, go here to view the testimony regarding voter ID from  
>our Feb. 2 public meeting. As I mentioned, at this meeting EAC Chair  
>Donetta Davidson requested that staff review the initial research provided  
>by Eagleton and produce a final report, which would include  
>recommendations for further study on this subject. Currently, staff is  
>working to finalize the voter ID report.

>

>Regarding the voter fraud and intimidation research, at a May 2006 public  
>meeting of our Standards Board and Board of Advisors, the EAC project  
>manager for this research presented a staff update on the project. Go here  
>to view the public meeting agenda, page 3. The document you referred to  
>was an update the project manager gave at this public meeting, and it has  
>been made available to anyone who asked for it. (It's attached.) The final  
>culmination of this project can be found here. Go to page 24, where you  
>will find links to attachments, which provide the data reviewed by the  
>consultants. The commissioners adopted this report, including four

030350

>recommendations for further study at a public meeting in Dec. 2006.  
>(Consultants provided 16 suggestions for further study. See pages 16-22.)  
>  
>As a small agency of 23 employees, including the four commissioners, it is  
>necessary for the agency to contract with consultants to gather the  
>initial data for these projects. After EAC receives the initial data, the  
>agency reviews the data for accuracy and then releases a final report.  
>  
>Please let me know if you would like to speak with EAC Chair Davidson if  
>you need something for attribution. She'd also be glad to discuss our  
>approach to both of these research projects. Again, my direct number is  
>202-566-3103 or you can reach me on my cell after 5:30 at 202-243-9476.  
>  
>  
>Jeannie Layson  
>U.S. Election Assistance Commission  
>1225 New York Ave., NW  
>Suite 1100  
>Washington, DC 20005  
>Phone: 202-566-3100  
>www.eac.gov

><< VF-VIStudyStatus5-17-06.pdf >>

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030360

Jeannie Layson /EAC/GOV  
03/14/2007 09:55 AM

To "Marie Cocco" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject RE: your inquiry

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Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
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Phone: 202-566-3100  
www.eac.gov  
"Marie Cocco" [REDACTED]



"Marie Cocco"  
<marie\_cocco@msn.com>  
03/14/2007 09:41 AM

To jlayson@eac.gov  
cc  
Subject RE: your inquiry

thanks a lot for your help and especially for your follow up call last night. it was above and beyond the call of duty.

Marie Cocco

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>[REDACTED]

>Subject: your inquiry

>Date: Tue, 13 Mar 2007 15:30:37 -0400

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030361

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>  
>  
>Jeannie Layson  
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>Washington, DC 20005  
>Phone: 202-566-3100  
>www.eac.gov

><< VF-VIStudyStatus5-17-06.pdf >>

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030362

Caroline C. Hunter/EAC/GOV  
03/13/2007 04:36 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC,  
bcc

Subject Re: Latest draft of the EAC Voter ID statement 

Attached, please find my edits. My intention was to try to explain in English how the Contractor conducted the study in the 2nd graph of the background statement. I realize I left some information out; for example, how he ran the numbers based on maximum and minimum id requirements. I am open to any suggestions on how to better describe what they did; however, despite reading the report and Appendix C many times, I am still do not understand exactly how the study was conducted. I think we should run the 2nd graph by the Contractor to ensure its accuracy.




VoterID Hunter edits.doc

Caroline C. Hunter  
Commissioner  
Election Assistance Commission  
1225 New York Avenue, NW  
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Washington, DC 20005  
(202) 566-3107  
chunter@eac.gov  
www.eac.gov

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

03/09/2007 05:20 PM

To Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,   
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov  
Subject Latest draft of the EAC Voter ID statement

Commissioners-

Commissioner Hunter noted that several changes to the draft that she had recommended were not included in the latest draft that I sent to Julie and Jeannie. had.

Attached please find this new version which I hope accurately reflects her suggestions; we are asking that everyone take a look at this version.

Please get me your comments and recommended edits by Monday.

Thanks-

030363



Voter ID Statement March 9.doc

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

030364

# EAC Statement on Future Study of Voter Identification Requirements

## Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

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## EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the

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<sup>2</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

<sup>3</sup> See EAC Public Testimony, February 8, 2007, page 109.

implementation of voter identification requirements, to be a first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation in turnout rates based on the type of voter identification requirements. EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the report.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

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- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Study the effects, including voter turnout, voter registration, and fraud, of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various

Deleted: , s



voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Margaret Sims /EAC/GOV  
03/13/2007 02:31 PM

To Jeannie Layson/EAC/GOV@EAC  
cc ddavidson@eac.gov, jthompson@eac.gov, twilkey@eac.gov  
bcc  
Subject Re: Voter ID, Fraud & Intimidation--Need your input

Looks fine to me. Of course, she is probably referring to our decision not to release the consultants' draft final report. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
03/13/2007 02:25 PM

To jthompson@eac.gov, twilkey@eac.gov, psims@eac.gov,  
ddavidson@eac.gov  
cc  
Subject Voter ID, Fraud & Intimidation--Need your input

Hello all,

A columnist from the WaPo has asked for info about both the voter ID and the fraud and intimidation reports. This was prompted by the accusation that the president was concerned that the fired prosecutors were not aggressively pursuing voter fraud cases. She had heard that we were refusing to release this information, so I am trying to demonstrate otherwise, as well as show that we have discussed these projects numerous times in public meetings. Please take a look at my draft email to her and let me know if you have any suggestions. She needs to hear back from me by 4 p.m. Thanks for your help with this.

Ms. Cocco,

Per your questions, go [here](#) to view the testimony regarding voter ID from our Feb. 2 public meeting. As I mentioned, at this meeting EAC Chair Donetta Davidson requested that staff review the initial research provided by Eagleton and produce a final report, which would include recommendations for further study on this subject. Currently, staff is working to finalize the voter ID report.

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As a small agency of 23 employees, including the four commissioners, it is necessary for the agency to contract with consultants to gather the initial data for these projects. After EAC receives the initial data, the agency reviews the data for accuracy and then releases a final report.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005

030368

Phone: 202-566-3100  
www.eac.gov

030369

Margaret Sims /EAC/GOV  
03/06/2007 03:09 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
cc bwhitener@eac.gov

bcc

Subject FYI-New Vote Fraud Report from Project Vote

----- Forwarded by Margaret Sims/EAC/GOV on 03/06/2007 03:05 PM -----



"Jo-Anne Chasnow"

03/06/2007 09:21 AM

To psims@eac.gov

cc

Subject Widespread Voter Fraud is a myth, says new Project Vote  
report

Hello, Peg.

I thought you might be interested in the fraud report that Project Vote just released.

Widespread "voter fraud" is a myth promulgated to suppress voter participation, according to a new Project Vote report released today. "The Politics of Voter Fraud" finds that fraudulent voting, or the intentional corruption of the voting process by voters, is extremely rare. Yet, false or exaggerated claims of fraudulent voting are commonly made in close electoral contests, and later cited by proponents of laws that restrict voting. The report is authored by Lorraine Minnite, Ph.D., Barnard College, Columbia University.

Best regards,

Jo-Anne



Politics of Voter Fraud Final.pdf Voter Fraud Press Release 030607.doc

030370

# THE POLITICS OF VOTER FRAUD

by Lorraine C. Minnite, Ph.D.  
Assistant Professor of Political Science  
Barnard College, Columbia University



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739 8th Street SE, Suite 202  
Washington, DC 20003

Arkansas Office  
2101 South Main Street  
Little Rock, AR 72206

1-800-546-8683

[www.projectvote.org](http://www.projectvote.org)

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# KEY FINDINGS

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- **Voter fraud is the “intentional corruption of the electoral process by the voter.”** This definition covers knowingly and willingly giving false information to establish voter eligibility, and knowingly and willingly voting illegally or participating in a conspiracy to encourage illegal voting by others. All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers fall under the wider definition of **election** fraud.
- **Voter fraud is extremely rare.** At the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.
- **The lack of evidence of voter fraud is not because of a failure to codify it.** It is not as if the states have failed to detail the ways voters could corrupt elections. There are hundreds of examples drawn from state election codes and constitutions that illustrate the precision with which the states have criminalized voter and election fraud. If we use the same standards for judging voter fraud crime rates as we do for other crimes, we must conclude that the lack of evidence of arrests, indictments or convictions for any of the practices defined as voter fraud means very little fraud is being committed.
- **Most voter fraud allegations turn out to be something other than fraud.** A review of news stories over a recent two year period found that reports of voter fraud were most often limited to local races and individual acts and fell into three categories: unsubstantiated or false claims by the loser of a close race, mischief and administrative or voter error.
- **The more complex are the rules regulating voter registration and voting, the more likely voter mistakes, clerical errors, and the like will be wrongly identified as “fraud.”** Voters play a limited role in the electoral process. Where they interact with the process they confront an array of rules that can trip them up. In addition, one consequence of expanding voting opportunities, i.e. permissive absentee voting systems, is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.
- **There is a long history in America of elites using voter fraud allegations to restrict and shape the electorate.** In the late nineteenth century when newly freed black Americans were swept into electoral politics, and where blacks were the majority of the electorate, it was the Democrats who were threatened by a loss of power, and it was the Democratic party that erected new rules said to be necessary to respond to alleged fraud by black voters. Today, the success of voter registration drives among minorities and low income people in recent years threatens to expand the base of the Democratic party and tip the balance of power away from the Republicans. Consequently, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

- ***The historically disenfranchised are often the target of voter fraud allegations.*** Fraud allegations today typically point the finger at those belonging to the same categories of voters accused of fraud in the past – the marginalized and formerly disenfranchised, urban dwellers, immigrants, blacks, and lower status voters. These populations are mostly found among those still struggling for full inclusion in American life.
- ***Better data collection and election administration will improve the public discussion of voter fraud and lead to more appropriate policies.*** We need better data, better election administration, transparency and more responsible journalism to improve public understanding of the legitimate ways in which electoral outcomes can be distorted and manipulated. This will help ensure that new laws and rules to prevent fraud are narrowly targeted to solve legitimate problems rather than used as a strategy to shape the electorate for partisan advantage.



# INTRODUCTION

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The claim that voter fraud threatens the integrity of American elections is itself a fraud. It is being used to persuade the public that deceitful and criminal voters are manipulating the electoral system. No available evidence suggests that voters are intentionally corrupting the electoral process, let alone in numbers that dilute and cancel out “the lawful votes of the vast majority of Americans.”<sup>1</sup> The lack of evidence is not due to a failure to codify voter fraud as a crime, nor is it due to the inability or unwillingness of local law enforcement agencies to investigate or prosecute potential cases of voter fraud. In fact, when we probe most allegations of voter fraud we find errors, incompetence and partisanship. The exaggerated fear of voter fraud has a long history of scuttling efforts to make voting easier and more inclusive, especially for marginalized groups in American society. With renewed partisan vigor fantasies of fraud are being spun again to undo some of the progress America has made lowering barriers to the vote.

The purpose of this report is to disentangle the myth from the reality and to separate the politics of voter fraud from legitimate administrative concerns about the integrity of the electoral process. To make the argument, we present a usable definition of voter fraud, discuss the problem of evidence, and explain how and why the dynamics of electoral competition drive the use of baseless fraud claims in American politics. We present several contemporary examples to illustrate how poor election administration and voter mistakes are misleadingly labeled “fraud.” Recent allegations against voter registration campaigns highlight the need for an analysis sensitive to the partisanship and race and class issues just beneath the surface of most voter fraud claims. The last section of the report makes policy recommendations for improving public understanding and removing the canard of voter fraud from the election reform debate. The appendix discusses what to look for in evaluating voter fraud allegations.

<sup>1</sup> U.S. Senate Republican Policy Committee, “Putting An End to Voter Fraud,” (February 15, 2005); available online at [http://rpc.senate.gov/\\_files/Febl504VoterFraudSD.pdf](http://rpc.senate.gov/_files/Febl504VoterFraudSD.pdf).

# DEFINING VOTER FRAUD

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Conceptual clarity is important in evaluating evidence of fraud. We begin with a discussion of what voter fraud is and what it is not. The first problem in defining voter fraud is that as a crime, it defies precise legal meaning. In fact, there is no single accepted legal definition of voter fraud. We have fifty different state electoral systems and fifty state criminal codes governing the administration of elections, plus a federal code that applies in national elections, and no uniform standards. In fact, some states do not actually criminalize 'voter fraud,' although they all criminalize acts that are commonly lumped together under the term, such as illegal voting, providing false information to register to vote, and multiple voting.<sup>2</sup> The legal incoherence contributes to popular misunderstandings.

We need a basic definition of voter fraud that cuts through the confusion without violating the way voter fraud is diversely treated in state and federal law. We can start with the U.S. Department of Justice's definition of **election fraud** and apply it to election crimes committed by **voters**. The Justice Department defines election fraud as "conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered."<sup>3</sup> Voter fraud is a sub-category of election fraud, or the intentional corruption of the electoral process by voters.

**Voter fraud is the intentional corruption of the electoral process by voters.**

This covers **knowingly and willingly** giving false information to establish voter eligibility, and **knowingly and willingly** voting illegally or participating in a conspiracy to encourage illegal voting by others.<sup>4</sup> Apparent acts of fraud that result from voter mistakes or isolated individual wrongdoing or mischief making not aimed at corrupting the voting process should not be considered fraud, though sometimes these acts are prosecuted as such.<sup>5</sup> All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers fall under the wider definition of **election fraud**.<sup>6</sup>

<sup>2</sup> There are many examples of states that criminalize what we think of as voter fraud without calling it voter fraud. Georgia, for example, has no election code offense for "voter fraud," but it does provide stiff penalties for "repeat voting" and "voting by unqualified elector." See, for example O.C.G.A. § 21-2-560 et seq. In New Hampshire, the crime of voting more than once is called "wrongful voting." See, N.H.R.S. § 63-659.34. In Alaska, voter impersonation, voting more than once, and registering to vote without being entitled to register are all simply called "voter misconduct." See, Ala. Statutes § 15.56.040 et seq.

<sup>3</sup> Craig C. Donsanto and Nancy Stewart, *Federal Prosecution of Election Offenses*, 6<sup>th</sup> Edition, U.S. Department of Justice, Criminal Division, Public Integrity Section (January 1995), 21 (herein cited as 'DOJ Manual').

<sup>4</sup> Fraud is commonly defined as "deception *deliberately* practiced with a view to gaining an unlawful or unfair advantage" (*emphasis added*). See *Webster's Revised Unabridged Dictionary*, Version published 1913 by the C. & G. Merriam Co. (Springfield, Mass.), under the direction of Noah Porter, D.D., LL.D. Criminal intent is a feature of the election crime codes of most states and the federal system, although a showing of intent is not always required to obtain a conviction for some forms of voter fraud such as "alien voting" (voting by a non-citizen).

<sup>5</sup> The proper venue for challenging mistakes that may have affected the outcome of an election is to follow state statutory procedures for an election challenge or contest. See, Barry H. Weinberg, *The Resolution of Election Disputes: Legal Principles That Control Election Challenges* (Washington, D.C.: IFES, 2006).

<sup>6</sup> This definition of voter fraud is simpler and more coherent than others offered. See, for example, U.S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study* (December 2006), 13-16; available online

Allegations of “voter fraud” should be analyzed to determine 1) who is alleged to have committed the fraud, and 2) which stage of the electoral process is alleged to have been corrupted. This approach will go a long way toward clarifying whether electoral integrity is being breached and what needs to be done to secure the process (see the appendix for further discussion of how to identify fraud).

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at [www.eac.gov/docs/Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.pdf](http://www.eac.gov/docs/Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.pdf) (herein cited as 'EAC Report'). Moreover, although it is simple, it preserves the meaning of “fraud” in the electoral context as outlined by the Justice Department. The Department’s manual for training U.S. Attorneys in investigating and prosecuting election crimes divides “election frauds” into two categories, one that involves the participation of voters and another that does not. Those election fraud crimes involving the participation of voters include vote buying schemes, absentee ballot frauds, voter intimidation schemes, migratory-voting (or floating-voter) schemes, and voter ‘assistance’ frauds, in which the wishes of the voters are ignored or not sought. See, Donsanto and Stewart (1995), 22-24. Acts of voter intimidation which are included in the election fraud definitions offered in both the EAC Report and the DOJ Manual are excluded here. While the intimidation of voters certainly corrupts the electoral process, it is a crime that more directly involves the deprivation of rights guaranteed by law and for that reason should be treated separately from acts of deceit.

# VOTER FRAUD AND THE PROBLEM OF EVIDENCE

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How prevalent is voter fraud? A 2005 U.S. Senate Republican Policy Committee report claimed that “voter fraud continues to plague our nation’s federal elections, diluting and canceling out the lawful votes of the *vast majority of Americans*” (emphasis added).<sup>7</sup> This would be shocking if it were true. But the Committee made it without providing a single piece of evidence to support or clarify the claim. It cited no surveys, no statistics, no studies, no credible evidence whatsoever to back up its warning that election results are routinely distorted by fraud in the United States.

## ***Evidence of voter fraud like all other crimes comes from law enforcement efforts to combat it***

The Committee cited no data because there is very little to cite. Evidence of voter fraud like evidence of other forms of criminal behavior is primarily produced by law enforcement efforts to detect and prosecute it. And the available evidence here suggests that voters rarely commit voter fraud.<sup>8</sup> As in the case of all other kinds of crime, it is simply unacceptable to allege law breaking without providing at least some supporting evidence.

What is that evidence? At the national level, a major new project at the U.S. Department of Justice, the Ballot Access and Voting Integrity Initiative (BAVII) has resulted in only a handful of convictions.<sup>9</sup> According to the Attorney General, since the inception of the program in 2002, “we’ve made enforcement of election fraud and corruption offenses a top priority.”<sup>10</sup> The result? Government records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. This includes 19 people who were ineligible to vote, five because they were still under state supervision for felony convictions, and 14 who were not U.S. citizens; and five people who voted twice in the same election, once in Kansas and again in Missouri.<sup>11</sup>

<sup>7</sup> U.S. Senate Republican Policy Committee (2005).

<sup>8</sup> The idea that voter fraud is first and foremost a crime reaches substantially the federal concept of election fraud which “applies only to activity that is appropriately remedied through criminal prosecution, as distinguished from other less severe remedies such as election contest litigation or administrative relief.” See, Craig C. Donsanto, “The Federal Crime of Election Fraud,” prepared for the Russian election reform website, Democracy.Ru, n.d.; available online at [www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html).

<sup>9</sup> On the origins of BAVII, see Jeffrey Toobin, “Annals of Law: Poll Positions,” *The New Yorker* (September 20, 2004). Very little information about the program’s overall scope and performance has been released by the Justice Department’s Public Integrity Section; annual press releases announce the numbers of investigations and convictions obtained, and the Public Integrity Section’s annual reports to Congress briefly discuss some of the cases, but efforts to acquire more information about the program have been stymied by the Criminal Division’s failure to respond to a Freedom of Information Act request filed in July 2005. Nevertheless, it is difficult to imagine that the Department would withhold information about closed cases of deceitful voters, and therefore likely that the limited information it has released so far is all there is.

<sup>10</sup> Prepared Remarks of Attorney General Alberto R. Gonzales, Ballot Access and Voting Integrity Symposium, Washington, D.C. (October 4, 2005).

<sup>11</sup> U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d.).

## Federal Prosecutions for Illegal Voting 2002 – 2005

CASTING A FALSE BALLOT	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
<b>False claim of eligibility</b>					
Non-citizen	4	1	3	11	19
Felon	4	1	3	2	10
<b>Multiple voting</b>	3	1	5		9
<b>TOTAL</b>	<b>11</b>	<b>3</b>	<b>11</b>	<b>13</b>	<b>38</b>

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d).

In addition, the BAVII uncovered several vote buying schemes that have resulted in the convictions or guilty pleas of about 30 people, though most of those convicted were party and election officials, candidates for public office and elected officials, and in one case, the commander of a local VFW post. The vote buying cases involved a handful of elections in the Appalachia regions of eastern Kentucky and West Virginia, East St. Louis, Illinois and Caldwell County, North Carolina.

The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.<sup>12</sup> There are no reliable, officially compiled, national or even statewide statistics on voter fraud.<sup>13</sup> Even though many criminal acts associated with "voter fraud" are classified as felonies, voter fraud fails to appear in the F.B.I.'s uniform crime reports. There are no publicly available criminal justice databases that include voter fraud as a category of crime. No states collect and publish statistics on voter fraud.<sup>14</sup>

### ***The lack of evidence is not due to a failure to codify voter fraud as a crime***

If fraud is such a persistent concern of those who run elections, government agencies responsible for election administration should collect statistics on it, as they do in other serious matters, certainly other crimes. It is not as if the states have failed to detail the ways voters could corrupt elections. There are hundreds of examples drawn from state election codes and constitutions that illustrate the precision with which the states have criminalized voter and election fraud.

If we use the same standards for judging voter fraud crime rates as we do for other crimes, which is to calculate the incidence of crime from law enforcement statistics on arrests, indictments and convictions, we must conclude that the lack of evidence of arrests, indictments or convictions for any of the practices defined as voter fraud means very little fraud is being committed relative to the millions of votes cast each year in state, local and federal elections.

<sup>12</sup> Lori Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Dēmos: A Network for Ideas and Action, 2003). The author is engaged in a more thorough analysis of state-level voter fraud data and investigations which will be published in her forthcoming book. To-date, the findings only confirm Minnite and Callahan's earlier conclusions.

<sup>13</sup> This is an urgent concern. Law professor Spencer Overton persuasively argues for a more empirical cost-benefit approach to evaluating the value and constitutionality of new restrictive photo identification voting requirements. As Overton notes, this approach is hampered by the lack of systematic data on fraud. See, Spencer Overton, "Voter Identification," *Michigan Law Review* 105(2007), 631-682.

<sup>14</sup> The California Secretary of State's Office compiled information on electoral fraud cases referred to its office from 1994 to 2003. The data were analyzed in an unpublished conference paper (see, R. Michael Alvarez and Frederick J. Boehmke, "Contemporary Election Fraud: A Quantitative Analysis of Election Fraud Cases in California," paper prepared for Election Fraud Conference, Center for Public Policy and Administration, The University of Utah, and the Caltech/MIT Voting Technology Project, Salt Lake City, Utah, September 29-30, 2006; available online at [www.vote.caltech.edu/events/2006/FraudConf/AlvBmk-paper.pdf](http://www.vote.caltech.edu/events/2006/FraudConf/AlvBmk-paper.pdf)), but they are not publicly available.

### **Examples Of How States Criminalize “Voter Fraud”**

- In Texas, a person can be convicted of a third degree felony if he or she “votes or attempts to vote in an election in which the person knows the person is not eligible to vote; knowingly votes or attempts to vote more than once in an election; or knowingly impersonates another person and votes or attempts to vote as the impersonated person.”<sup>i</sup>
- California’s election code has dozens of provisions that prohibit illegal activity associated with elections. It prohibits fraudulent registration, including registering under a false name, registering under a false address, and registering a non-existent person. It makes it a felony for a person to vote in an election that he or she is not entitled to vote in, to vote more than once, or impersonate another voter. Moreover, it is a felony in California to “give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to” vote or not vote for a particular candidate.<sup>ii</sup>
- Pennsylvania law gives the power to monitor elections to county boards of elections, and imposes a substantial number of penalties on people engaging in election fraud. Giving or receiving money in exchange for voting a certain way in an election can bring up to seven years in prison and \$15,000 in fines. Any person convicted of perjury “regarding any material matter or thing relating to any subject being investigated, heard, determined or acted upon by any county board of elections, or member thereof, or by any court or judge thereof, judge of election, inspector of election, or overseer” can receive up to five years in prison and a \$10,000 fine. Any person voting when they are not registered to vote, or voting more than once can be punished the same.<sup>iii</sup>
- Nineteenth century language in the Alabama Constitution disqualifies from voting “all idiots and insane persons” and those convicted of crimes like murder, arson, and rape, but also wife battering, bigamy, sodomy, miscegenation and vagrancy. It also disqualifies from voting any person convicted of “selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.”<sup>iv</sup>
- In Minnesota, it is a felony to submit more than one absentee ballot, assist another in submitting more than one absentee ballot, or alter another’s absentee ballot in any way.<sup>v</sup>

<sup>i</sup> Tex. Gov’t Code Ann. § 64.012.

<sup>ii</sup> Cal. Gov’t Code § 18520.

<sup>iii</sup> 25 Pa. Stat. Ann. Art. XVIII, generally.

<sup>iv</sup> Constitution of Alabama (1901), Section 182.

<sup>v</sup> Minn. Stat. Ann. § 203B.03.

### ***The lack of evidence of voter fraud is not due to law enforcement agencies ignoring their duties***

Even if crime reports underestimate true crime rates because some crimes go unreported or undetected, or because criminal behavior is sometimes addressed by means other than prosecution, crime is still measured as a function of law enforcement efforts to address it. Under the rule of law, enforcement efforts establish the core evidence of crime. It is difficult to conceive of whole categories of criminal behavior that go almost completely undetected or ignored by law enforcement officials at all levels of government across the U.S. today. And yet, those who believe there is a lot of voter fraud despite the lack of evidence frequently fall back on this argument. When confronted they charge the paucity of evidence is due to the government's failure to undertake the investigations and prosecutions that would produce it.<sup>15</sup> A more plausible explanation is that voters are not committing fraud, leaving little to investigate or prosecute.

### ***The lack of evidence of voter fraud is not due to the inability of law enforcement agencies to pursue voter fraud investigations***

Some argue that local officials are ill-equipped to detect voter fraud and poorly motivated to pursue investigations and prosecutions of voter fraud given their lack of expertise and resources and the public's demand for attention to more serious or violent crimes.<sup>16</sup> If election crime, perhaps like international securities fraud or organized crime, were beyond the ken of local officials to investigate, then we might expect a dearth of prosecutions and little evidence of voter fraud. This is another explanation offered by those who argue that there is a lot of fraud despite the lack of evidence. Local officials, the argument goes, can't or won't prosecute fraud for a variety of reasons. The detection and prosecution of voter fraud, however, is not beyond the ken of local officials. In fact, as the Justice Department manual on how to investigate and prosecute election crime argues, "there are several reasons why election crime prosecutions may present an easier means of obtaining convictions than do other forms of public corruption." They are, 1) "election crimes usually occur largely in public," 2) "election crimes often involve many players," and 3) "election crimes tend to leave a paper trail."<sup>17</sup> Without any evidence to support it, the notion that local law enforcement officials are unable or unwilling to investigate or prosecute voter fraud lacks merit. But, as the saying goes, if you repeat a rumor enough times people will start to believe it.

<sup>15</sup> Recently, a federal appeals court judge repeated the rumor that, "...the absence of [voter fraud] prosecutions [in Indiana] is explained by the endemic under enforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events)." See, *Indiana Democratic Party v. Rokita*, U.S. Court of Appeals, 7<sup>th</sup> Circuit, Case No. 06-2218, 7. This is a contentious issue, but like most allegations of voter fraud, one that fails to rise above the level of anecdote.

<sup>16</sup> For example, in affirming the lower court's decision upholding Indiana's new photo identification law, U.S. Court of Appeals Judge Richard Posner proposed the idea that as a crime, voter fraud is analogous to littering. See also Donsanto and Stewart, asserting, "...local law enforcement is often not equipped to prosecute election offenses" (1995, 8), and Donsanto's subsequent statement that, "Voter fraud investigations are labor intensive. Local law enforcement agencies often lack the manpower and the financial resources to take these cases on." (Donsanto, n.d.) Here, Donsanto, the director of the Elections Crimes Branch of the Justice Department's Public Integrity Section since its inception in 1978, undermines a claim he makes earlier in a *University of Baltimore Law Review* article, that, "Most election fraud is easily recognized." If it's easily recognized, why would local law enforcement agencies lack the manpower and resources to take on investigations and prosecutions? See, Craig C. Donsanto, "Federal Jurisdiction Over Local Vote Fraud," *University of Baltimore Law Review* 13(1), 4.

<sup>17</sup> Donsanto and Stewart (1995), 6.

# “FRAUD” THAT IS NOT FRAUD

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A review of hundreds of news reports on voter fraud appearing over a recent two year period found that with few exceptions, fraud allegations and cases reported in the press were limited to local electoral contests and individual acts, and fell into three basic categories:

- 1) *unsubstantiated or false allegations of voter fraud made by the losers of close elections;*<sup>18</sup>
- 2) *mischief; and,*
- 3) *claims that later turn out to be based on cases of voter error or administrative mistakes, not fraud.*

## **Here are some examples:**

### **Examples of fraud alleged by election losers**

- Pittsburgh City Council President Bob O'Connor lost a close primary race to incumbent Mayor Tom Murphy and charged voter fraud cost him the election. Pittsburgh election officials allowed the two campaigns to review balloting while monitoring each other. Mayor Murphy's campaign found 81 ineligible voters in a sampling of 71 of the city's 404 precincts. The *Pittsburgh Post-Gazette* reviewed Murphy's data and found only three clearly improper ballots. The O'Connor campaign claimed it found 142 votes cast by people whose voter registration cards were missing but would not share its data with the *Post-Gazette* for independent verification.<sup>19</sup>
- The Pasco County Canvassing Board of Port Richey, Florida, denied a request for a recount filed by Bob Leggiere who lost to the incumbent by nine votes. Leggiere claimed that voter fraud and 11 ballots that did not register a vote for mayor were the cause of his defeat. He charged that owners of a gambling boat operation voted illegally because their boat, which was their legal residence, was outside the city limits, suggesting that "because of their gambling boat interests, they have attempted to take control of the city elections." The canvassing board informed Leggiere that he needed to file a protest with the board or a complaint in court, which he declined to do.<sup>20</sup>

### **Examples of fraud as mischief**

- A Ventura County, California woman was arrested and charged with voter fraud when her ex-husband noticed the names of two of their underage children on a list of registered voters in the March 2000 primary and turned her in. The woman was charged with fraudulently registering her 10- and 15-year old daughters, one of her daughter's friends, her ex-husband who was already registered, and a number of fictitious people.<sup>21</sup>

<sup>18</sup> For a discussion of fraud and the sore loser, see Michelle L. Robinson, "Issue in the Third Circuit: Election Fraud – Winning At All Costs," *Villanova Law Review* 40 (1995), 869+.

<sup>19</sup> James O'Toole, "Voting Errors Suggest No Fraud," *Pittsburgh Post-Gazette* (June 17, 2001), B17.

<sup>20</sup> Chase Squires and Matthew Waite, "Fraud Alleged in Port Richey Vote," *St. Petersburg Times* (April 12, 2001), B4.

<sup>21</sup> "Woman Faces Vote Fraud Charges," *The San Diego Union-Tribune* (October 29, 2000), A3.



- Prosecutors in West Palm Beach, Florida agreed not to charge a woman who registered her poodle, "Cocoa Fernandez," as a Republican on the condition that the woman stay out of trouble for a year. She averted a third-degree felony charge carrying a maximum 5-year prison term and a \$5,000 fine.<sup>22</sup>
- A story appeared in the Marquette University student paper that 174 of 1,000 students surveyed said they voted more than once in the November 2000 presidential election. Another 170 claimed to have voted for write-in candidates, but the official canvass of the voting precincts surrounding the Marquette campus recorded only 12 write-in votes for president. One student told ABC News, the *Milwaukee Journal Sentinel* and the Marquette student paper that he voted four times. He later recanted when a list of voters from his precinct did not include his name at all. The Milwaukee County District Attorney said he had no evidence of any student voting more than once. The student who told the media he voted four times was later charged with selling other students fake Ohio drivers licenses he printed using his dorm room computer.<sup>23</sup>

### **Examples of fraud as voter error**

- The *Milwaukee Journal Sentinel* conducted a two-month review of 203,000 votes cast in Milwaukee and found that 361 felons still under state supervision cast votes in 2000. This was in violation of an "often misunderstood state law" that disqualifies felons on probation or parole from voting. Ninety percent of the 361 illegal votes were cast by African Americans living in central city neighborhoods, most with convictions for welfare fraud, forgery and other property offenses. The newspaper reasoned that the illegal votes probably went to Al Gore, since 92 percent of African Americans in the state voted for Gore. They estimated that if disqualified felons elsewhere in the state voted illegally at the same rate obtained in Milwaukee, as many as 1,100 illegal votes could have been cast statewide, a significant number given Gore's margin of victory was only 5,708 votes. None of the illegal voters contacted by the paper knew they were prohibited from voting, and a review of parole and probation procedures suggested they were never informed.<sup>24</sup> Charges were filed against three people but later dropped when prosecutors couldn't prove those charged knew they were breaking the law.
- A voter inadvertently filled out five ballots in a local election in Montgomery County, Texas. "It (the five ballots, sic) was just handed to me and I just put them in the box," said the culprit, 52-year old Ruben Jones, "I wasn't paying attention." An election judge allowed one of Jones' votes to count resulting in a tie at 83 votes each between two candidates who were then forced into a run-off. Fraud was charged. The city attorney acknowledged the judge's mistake but could not overturn his decision to allow one of the votes to count. There was no provision in Texas election law for overruling an election judge on such matters.<sup>25</sup>

Examples of cases of administrative incompetence and mistakes leading to misplaced allegations of voter fraud in St. Louis and Milwaukee are discussed in detail below.

<sup>22</sup> "In Brief/Florida: No Charges, But Pooch Can't Punch Ballot," *Los Angeles Times* (December 17, 2001), A23.

<sup>23</sup> "Marquette Student Admits He Didn't Vote Four Times," *Chicago Sun-Times* (November 16, 2000), 3; "Voter Fraud Inquiries Lead to Charges Against 3 in Milwaukee," *St. Louis Post-Dispatch* (December 21, 2000), A8.

<sup>24</sup> Dave Umhoefer and Jessica McBride, "361 Felons Voted Illegally in Milwaukee; Law Is Poorly Understood, Rarely Invoked Here," *Milwaukee Journal Sentinel* (January 21, 2001), 1A.

<sup>25</sup> Harvey Rice, "Ballot Error Won't Change Deadlocked Race," *The Houston Chronicle* (May 12, 2001), 33.

# THE POLITICS OF VOTER FRAUD CLAIMS

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There are many reasons why electoral reform is difficult to achieve, chief among them the benefits the *status quo* bestows on politicians in charge of making the rules. Voting rights advocates working to expand the electorate and make voting easier for more citizens must also overcome recurring arguments that reform will encourage more voter fraud. Indeed, the specter of voter fraud has been manipulated by elites to restrict and shape the electorate for nearly two centuries.

## ***The Late Nineteenth Century and the “Good Government” Defense***

The electoral reforms of the Progressive era dismantled Populist voting majorities and reflected the reformers' class and anti-immigrant biases. Following the turmoil of the election of 1896 when new immigrants, struggling farmers, and wage workers flooded into the electorate, wealthy elites pressed for tighter regulation of the electoral process. They promoted personal voter registration systems that had the effect of de-mobilizing the poor and working classes.<sup>26</sup> The reformers' rhetoric fastened on fraud and the need to eliminate it in order to protect 'the Democracy.' The perception of fraud and widespread electoral corruption gave their efforts moral ballast which obscured the class conflict at the center of the struggle for the vote.

***The specter of voter fraud has been manipulated by elites to restrict and shape the electorate for nearly two centuries.***

For Progressive era elites, voter registration was good government and universal voting was directly associated with corruption and voter fraud.<sup>27</sup>

Municipal reformers drawn from the ranks of the new middle and upper class professional strata assumed the lower classes possessed inferior moral capacities that produced unscrupulous behavior in politics. They wrestled control of government away from the older political machine organizations by imposing administrative reforms on the electoral process. These reforms deliberately privatized and personalized the social act of voting in order to undercut the machine's capacity to mobilize majorities through ethno-religious and other group-based appeals.<sup>28</sup>

<sup>26</sup> Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000), 91-2.

<sup>27</sup> Dayna Cunningham, "Who Are To Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991), 383.

<sup>28</sup> After the Civil War, the electorate was demobilized in different ways in the North and South. Black disenfranchisement was pursued through the use of violence and terror, and institutionalized through the re-writing of Southern state constitutions between 1890 and 1910. Mississippi pioneered the "Southern system" of burdensome residency requirements, periodic registration, poll taxes, literacy and "understanding" requirements, and exacting disqualification provisions, all designed to strip black men of the vote without reliance on overt racial classifications (Cunningham (1991), 377). There is a large scholarly literature on this subject. See, for example, classic works by V.O. Key, *Southern Politics in State and Nation* (New York: A. A. Knopf, 1949); and J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974). On efforts to reshape the electorate outside of the South during this period, see, Walter Dean Burnham, "The Appearance and Disappearance of the American Voter," in Walter Dean Burnham, *The Current Crisis in American Politics* (New York: Oxford University Press, 1983); and Paul Kleppner, *Who Voted? The Dynamics of Electoral Turnout, 1870-1980* (New York: Praeger, 1982). For a fascinating account of how nineteenth century voters behaved at the polls on Election Day, see Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (New York: Cambridge University Press, 2004).

Much has been written about the colorful and varied forms of political corruption in the nineteenth century.<sup>29</sup> The debate over the extent of fraud among scholars, however, has failed to settle the question of whether it accounted for the extraordinarily high levels of turnout that disappeared with the adoption of personal voter registration systems.<sup>30</sup> Nor is it certain that the new voter registration laws were responsible for reducing the election fraud they were aimed at eliminating. But, election fraud documented by the reformers usually involved organized efforts by election officials and politicians, not by the voters who were the intended target of restrictive reforms like voter registration.<sup>31</sup>

Nevertheless, voting rights have been won. Most of the conditions that once gave rise to what we would characterize as fraudulent practices today, such as ballots produced and distributed by the political parties, have changed. In the nineteenth century, election fraud was sometimes perpetrated by partisans acting together to steal elections. Local party organizations competed for voters and controlled votes through patronage, and the stakes were high. In those days, parties, patronage and fraud were intertwined. Today, local party organizations are weak to nonexistent, in part because their access to patronage has all but disappeared. They no longer control lucrative franchises, run police and fire departments, set utility rates or build large-scale public works. The demise of local parties and patronage over the last century has undermined the logic and eroded the means of committing voter fraud.

***The demise of local parties and patronage over the last century has undermined the logic and eroded the means of committing voter fraud.***

***The Civil Rights Era and Beyond***

With each significant effort to protect and extend the right to vote, opponents have argued that the expansion of the franchise, whether through federal protections for voting rights or through reduced structural barriers to the franchise, would lead to more voter fraud. The threat of fraud was taken up by congressional opponents of the Voting

Rights Act of 1965; it was raised in the conflict over extending the Act during the first Reagan Administration; and again, in more recent debates over the National Voter Registration Act.<sup>32</sup> It is the very success of these reforms that explains why fraud claims have re-emerged as a principle form of voter intimidation. The victories of the civil rights movement make it no longer easy or acceptable to suppress voting through the use of terrorism or violence, or with a poll tax or a literacy test. Today the intimidation is more subtle.

The dynamics of electoral competition in a two-party plurality system also contribute to the resurrection of the specter of voter fraud. When elections are close, the logic of competition drives opponents to fierce conflict. The winner in a two-party system needs only one vote more than his or her opponent; 51 percent of the votes wins it all, 49 percent wins nothing. Competing parties in

<sup>29</sup> See, for example, Glenn C. Altschuler and Stuart M. Blumin, *Rude Republic: Americans and Their Politics In the Nineteenth Century* (Princeton: Princeton University Press, 2000); and Tracy Campbell, *Deliver the Vote: A History of Election Fraud, an American Political Tradition – 1724-2004* (New York: Carroll & Graf, 2005).

<sup>30</sup> See, Piven and Cloward (2000), 25-6, discussing the work of Walter Dean Burnham, Philip Converse, Paul Kleppner and Jerrold G. Rusk. See also, Howard W. Allen and Kay Warren Allen, "Vote Fraud and Data Validity," in Jerome M. Clubb, William H. Flanigan, and Nancy H. Zingale, eds., *Analyzing Electoral History: A Guide to the Study of American Voter Behavior* (Beverly Hills: Sage Publications, Inc., 1981), 153-194.

<sup>31</sup> See Cunningham (1991), 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934).

<sup>32</sup> For an important account of the movement to reform voter registration laws leading to the passage of the National Voter Registration Act of 1993, see Margaret M. Groarke, *Expanding Access to the Vote: An Analysis of Voter Registration Reform in the United States, 1970-1993* (Ph.D. diss., Department of Political Science, City University of New York, 2000).

close elections fight hard to maximize their chances of winning that 51 percent<sup>33</sup> because the closer the election, the fewer the number of voters that are needed to shift victory to one party or the other. Tight elections produce the biggest pay-off for the smallest shifts in vote share.

Theoretically, parties or campaigns can produce a shift by expanding votes for themselves or constraining votes for their opponents, or even pursuing both practices at the same time. But expanding the vote carries higher risks for incumbents. Elected officials try to preserve the majorities that elect them and are wary of the threat new voters pose. Both parties, therefore, are wary of expansion. Since the success of the Voting Rights Act prohibits them from carving out their majorities in ways that directly violate laws protecting voting rights, they shape and manage their electorates by more subtle means, through the rules that govern the electoral process. Both parties seek to control, enforce and bend electoral rules to their advantage. As the political scientist, E.E. Schattschneider once observed,

In politics as in everything else it makes a great difference whose game we play. The rules of the game determine the requirements for success. . . . and go to the heart of political strategy.<sup>34</sup>

For example, today, Republican party officials and incumbents support restrictive interpretations of the rules governing voter qualifications when they anticipate that tightening access to the vote will hurt their rivals.

They insist that the votes of legitimate, qualified voters are threatened by the votes of ineligible voters, justifying their support for restrictive identification requirements.<sup>35</sup> The Democrats resist these efforts when they think the new rules will threaten their own party base; but if the new rules aren't likely to threaten the base, the Democrats, whose elected officials share the same interest in a stable, predictable electorate as their Republican colleagues, compromise and endorse new restrictions. The Democrats' concession to the inclusion

of an identification requirement for first time voters who register to vote by mail in the Help America Vote Act of 2002 (HAVA), in the face of widespread opposition on the part of voting rights advocates, is a case in point.<sup>36</sup> New HAVA voter identification requirements apply to a diffuse category of new voters whose party loyalties were unknown and therefore in adding this rule at the national level, neither party could claim an uncontested advantage or disadvantage. In the partisan wrangling over the bill, the important questions about the extent of voter fraud and the effectiveness of new rules in combating it were lost.

***Given the particular party and competitive dynamics of the current period, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.***

<sup>33</sup> Or a plurality when the occasional third party candidate is in the race.

<sup>34</sup> E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960), 48-49.

<sup>35</sup> U.S. Senate, Republican Policy Committee (2005).

<sup>36</sup> Emily Pierce, "Senate Standoff Over Voter Fraud Provision Threatens to Sink Election Bill," *CQ Monitor News* (February 28, 2002); Karen Foerstel with Emily Pierce, "Hopes for Quick Accord on Election Standards Bill Face Liberals' Objections," *CQ Weekly - Elections* (April 13, 2002), 957; Geoffrey Gray, "Schumer's Identity Politics: Civil Rights Advocates Fight Compromise on Election Reform," *The Village Voice* (April 3-9, 2002), 42; Gabrielle B. Ruda, "Note: Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act," *Fordham Urban Law Journal* 31 (November 2003), 235.

In a competitive electoral environment it is easier and safer for the parties to try to stabilize the base and reduce the opposition's support than it is for either to recruit new voters. Given the particular party and competitive dynamics of the current period, the use of baseless voter fraud allegations for partisan advantage has become the exclusive domain of Republican party activists.

Take the American Center for Voting Rights (ACVR). This organization established a presence on the Internet in March 2005, just six days before a Republican-controlled U.S. House Administration Committee hearing on problems in the 2004 Ohio election, and was the only "voting rights" group allowed to testify. Although ACVR claims it is nonpartisan, its founders, leadership, and staff have strong ties to the Republican party.<sup>37</sup> Its report on "Voter Fraud, Intimidation and Suppression in the 2004 Presidential Election," professes to be "the most comprehensive and authoritative review of the facts surrounding allegations of vote fraud, intimidation and suppression made during the 2004 presidential election." It is little more than a compendium of poorly scrutinized newspaper articles sensationalizing election shenanigans allegedly instigated in all but two instances by Democrats.<sup>38</sup> Despite the not so veiled partisanship and absence of credentials, ACVR has achieved remarkable influence advocating for strict, government-issued photo identification requirements and promoting the idea that American elections are riddled with voter fraud. Its leader, attorney and political operative, Mark F. (Thor) Hearne, II, is a serial expert witness before Congress and other government bodies on the need for photo ID. His testimony repeatedly relies for evidence on anecdotes and misleading news reports that grossly overstate the problem of voter fraud.<sup>39</sup>

The systematic use of baseless voter fraud allegations is strategic and in this sense rational, if unethical. In the late nineteenth century when freedmen were swept into electoral politics and where blacks were the majority of the electorate, it was the Democrats who were threatened by a loss of power, and it was the Democratic party that erected new rules they claimed were necessary to respond to the alleged fraud of black voters.

Today, the success of voter registration drives among minorities and low income people in recent years threatens to expand the base of the Democratic party and tip the balance of power away from the Republicans. Therefore, it is not difficult to understand why party operatives might seek to strategically generate enough public support for new restrictions on the vote that will disproportionately hinder opposition voters.<sup>40</sup> These efforts are misleadingly labeled "the electoral integrity" movement because after two hundred years struggling for the vote and winning it from below, ordinary voters are not so easily discredited in the name of democracy. Efforts to do so must appeal to misplaced moral sensibilities like the idea that "integrity" trumps rights. In the end, baseless voter fraud claims are essentially political acts because the contested history of party, race and class in American politics makes them so.

<sup>37</sup> See [bradblog.com](http://bradblog.com) ([www.bradblog.com/ACVR.htm](http://www.bradblog.com/ACVR.htm)) for a collection of articles on the ACVR by Brad Friedman and his colleagues.

<sup>38</sup> Dimitri Vassilaros, "'Study' is Political Fraud," *Pittsburgh Tribune-Review* (August 8, 2005); available online at: [www.pittsburghlive.com/x/pittsburghtrib/s\\_360812.html](http://www.pittsburghlive.com/x/pittsburghtrib/s_360812.html).

<sup>39</sup> Hearne is listed as an "academic advisor" to the Commission on Federal Election Reform (the Carter-Baker Commission), despite his lack of academic credentials. For Hearne's testimony before government bodies, see, Testimony of Mark F. (Thor) Hearne, II, on "Voter Fraud in Ohio in the 2004 Presidential Election," U. S. House of Representatives, Committee on House Administration, March 21, 2005; "Regarding the Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity," Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution Civil Rights and Property Rights, July 10, 2006; "Assessing the Conduct of the 2006 Mid-term Elections," Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Elections Assistance Commission, December 7, 2006.

<sup>40</sup> There is strong empirical evidence suggesting restrictive photo identification requirements place a disproportionate burden on low income people and minorities. See, Brennan Center for Justice at NYU School of Law and Spencer Overton, "Response to the Report of the 2005 Commission on Federal Election Reform," 2005; available online at [www.carterbakerdissent.com](http://www.carterbakerdissent.com). Overton served as a commissioner on the 2005 Commission on Federal Election Reform.

# THE USUAL SUSPECTS

## *The Historically Disenfranchised Are Often the Alleged Perpetrators of Voter Fraud*

Fraud allegations typically point the finger at those belonging to the same categories of voters accused of fraud in the past – the marginalized and formerly disenfranchised, urban dwellers, immigrants, blacks, and lower status voters. The targeting is not overt, the language is rarely explicitly racial. Instead, fraud claims tap into older elite associations of political corruption with minorities, big city machine organizations, and the poor. Allegations of voter fraud resonate with the public because they revive a familiar culture of corruption and legends about election fraud that enliven American political history. Today, the alleged culprits are mostly found among those still struggling for full inclusion in American life. This makes them suspect. That they are more likely to identify with one party than the other makes them doubly vulnerable to fraud accusations and to the collateral damage of high stakes competitive partisan politics.

***Fraud claims tap into older elite associations of political corruption with minorities, big city machine organizations, and the poor.***

## **Why Voter Registration Drives Are Vulnerable to Fraud Claims**

Since at least the 1960s, the voter registration drive has played a central role in black politics and broader efforts to engage the electoral participation of low-income groups.<sup>41</sup> The intensity of voter registration activities has waxed and waned over the years, with a recent upsurge in third party voter registration drive activity since the disputed 2000 presidential election. By 2004, approximately 12 million registered voters (or 8.5 percent of all registered voters) had registered as a result of a voter registration drive.<sup>42</sup>

## **How Americans Were Registered To Vote in 2004** (Numbers in Thousands)<sup>43</sup>

	Voters	Percent
Went to a town hall or county/government registration office	34,657	24.5
At a department of motor vehicles agency	27,126	19.2
By mail	17,642	12.5
Filled out form at a registration drive	11,973	8.5
Registered at polling place	9,118	6.4
Filled out a form at a school, hospital, or on campus	8,078	5.7
Through a public assistance agency	1,094	0.8
Other	8,819	6.2
Don't know	22,901	16.2
<b>TOTAL</b>	<b>141,408</b>	<b>100%</b>

Source: U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File.

<sup>41</sup> In the 1980s, white Christian conservatives and other middle class groups adopted the registration drive with considerable success, but it remains an iconic expression of black political aspiration.

<sup>42</sup> U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File [Computer file]. ICPSR04272-v1. Washington, DC: U.S. Dept. of Commerce, Bureau of the Census [producer], 2005. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2006-01-16; author's calculations.

<sup>43</sup> The table reports method of registration for all registered voters, excluding missing cases. The data are estimates with sampling and non-sampling error, and are weighted by age, sex, race, Hispanic ancestry, and state of residence to partially correct for bias due to under-coverage.

Those registering through drives were more likely to be people of color and of lower income than other registered voters.

**Method of Registration by Race and Income<sup>44</sup>**

Filled Out Form at Registration Drive	
<b>Race</b>	
Whites only, non-Hispanic	8.9
Blacks only, non-Hispanic	15.2
Hispanic (all races)	15.5
Asian only, non-Hispanic	12.7
Others	10.1
<b>Total Annual Family Income</b>	
Less than \$15,000	11.6
\$15,000 or more	10.0

Source: U.S. Dept. of Commerce, Bureau of the Census. Current Population Survey, November 2004: Voter Supplement File.

The number of low income drive registrants is three times the number of low income voters registering at public assistance agencies mandated by the National Voter Registration Act of 1993 (NVRA) to provide registration opportunities. Just four percent of registered voters with total annual family income below \$15,000 (approximately 470,000 people) were registered to vote through a public assistance agency. This compares to approximately 1,328,000 low income voters, or 11.6 percent of those with less than \$15,000 in annual family income, who said they were registered through a registration drive.<sup>45</sup> It is clear that despite the intent of NVRA to open registration opportunities to low income Americans, thousands of eligible citizens would be left out of the electoral process were it not for the third party groups who register and encourage them to vote.

Competitive or high interest elections like those of the last six years increase incentives to mobilize voters, including the recruitment of new voters – not only to the parties, but to all the other groups who believe they have a stake in the outcome. The use of thousands of volunteers and temporary workers in these drives contributes to the potential for mistakes and duplication in the registration process. This is one of the consequences of essentially “outsourcing” voter registration to the private sector rather than placing the burden of registration on the state as is done in many of the European democracies.<sup>46</sup> If voter registration were mandatory like paying taxes, voter registration drives would not be necessary.

<sup>44</sup> The table compares only those registered voters who could identify their method of registration. Data on income are limited to people living in families. Family income is the combined income of all family members over the previous year and includes money from jobs, net income from business, farm or rent, pensions, dividends, interest, Social Security payments and any other money income received by family members who are 15 years of age or older.

<sup>45</sup> U.S. Dept. of Commerce (2005); author’s calculations. For an analysis of the recent drop off in implementation of the agency-based requirements of the NVRA, see *Ten Years Later, A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005*, a report compiled by Dēmos, A Network for Ideas and Action; ACORN; and Project Vote (July 2005); available online at [http://projectvote.org/fileadmin/ProjectVote/pdfs/Tens\\_Years\\_Later\\_A\\_Promise\\_Unfulfilled.pdf](http://projectvote.org/fileadmin/ProjectVote/pdfs/Tens_Years_Later_A_Promise_Unfulfilled.pdf).

<sup>46</sup> The National Commission on Election Reform Task Force on the Federal Election System notes that, “the registration laws in force throughout the United States are among the world’s most demanding...[and are] one reason why voter turnout in the United States is near the bottom of the developed world.” National Election Commission, *Report of the Task Force on the Federal Election System*, chapter 2 “Voter Registration,” (July 2001), 3; available online at [www.tcf.org/Publications/ElectionReform/NCFER/hansen\\_chap2\\_voter.pdf](http://www.tcf.org/Publications/ElectionReform/NCFER/hansen_chap2_voter.pdf).

With the upsurge in voter registration activity has come more media attention to the handful of cases in which organizations have been accused of submitting fraudulent registration applications to local elections officials. No amount of fraud in the registration process is acceptable, but the accusations that voter fraud "is breaking out all over"<sup>47</sup> as a result of "a coordinated effort by members of some organizations to rig the electoral system through voter registration fraud" that put "thousands of fictional voters"<sup>48</sup> on the rolls are unsupported by any credible evidence anyone has been able to bring to bear. In fact, the suspicions about a vast "left-wing" or "Liberal Democrat-sponsored" conspiracy to commit voter registration fraud border on the paranoid.<sup>49</sup>

According to available government data, between October 2002 and September 2005, the federal government prosecuted just 33 people for various misdemeanor and felony crimes related to any form of election fraud that could have involved voter registration.<sup>50</sup> All but two people indicted were prosecuted for falsifying information about *their own* eligibility to vote, including: 20 people in four states who were prosecuted for registering or voting but who were ineligible under state law because they lacked U.S. citizenship; and ten people who voted in the 2004 presidential election in Milwaukee who were prosecuted for falsely certifying that they were eligible to vote when they were still under state supervision for felony convictions.<sup>51</sup> Ten of the 33 – five of the non-citizen cases and five of the felon cases – were either acquitted of the charges against them or had their indictments dismissed.<sup>52</sup> At least 19 of the 23 people convicted were alleged to have voted illegally because they were ineligible to vote, but notably, these people registered to vote and voted using their real names, hardly acts of conspiracy or of criminals trying to get away with committing fraud. Only two people were prosecuted for crimes related to fabricated voter registration applications for other people. One pleaded guilty to making false statements to a grand jury in connection with 11 fraudulent registration forms. The other, a St. Martinsville, Louisiana city councilwoman running in a hotly contested race for re-election in 2002, pleaded guilty to conspiring to submit false address

***Between October 2002 and September 2005, the federal government prosecuted just 33 people for various misdemeanor and felony crimes related to any form of election fraud that could have involved voter registration.***

<sup>47</sup> Michelle Malkin, September 29, 2004 blog entry; available online at <http://michellemalkin.com/archives/000596.htm>.

<sup>48</sup> American Center for Voting Rights Legislative Fund, "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," *ACVR Legislative Fund Report* (August 2, 2005), 35; available online at [www.ac4vr.com/reports/072005/080205report.pdf](http://www.ac4vr.com/reports/072005/080205report.pdf).

<sup>49</sup> See, for example, the postings of "Dean," on [democratvotefraud.blogspot.com](http://democratvotefraud.blogspot.com) (accessed in October 2006). This blog collects dozens of news articles from the 2004 election, most of which report allegations of campaign dirty tricks and voter registration fraud, and discuss protests against new "anti-fraud" measures adopted in some states like Ohio, all perpetrated by Democrats or their supporters. Under the title, "Liberal Democrat Vote Fraud," Dean explains, "We all saw the results of the 2000 American election. This time, I'm personally going to fight back in the only way that I can, with a blog that documents as many news reports about Democrat fraud as I can."

<sup>50</sup> U.S. Department of Justice, Criminal Division, Public Integrity Section, "Election Fraud Prosecutions and Convictions; Ballot Access and Voting Integrity Initiative, October 2002 – September 2005" (n.d.); available online at <http://cha.house.gov/media/pdfs/DOJdoc.pdf>. Several of these people technically were not charged with voter registration fraud, but with making false statements to government agencies (i.e., a driver's license bureau or the INS) regarding their citizenship status or eligibility to vote. This number includes cases of illegal voting due to ineligibility, assuming they must have involved registration fraud, even if it wasn't charged.

<sup>51</sup> One of those convicted, Kimberly Prude, worked as an election inspector in Milwaukee. As of February 2006, Prude was appealing her conviction. See, *United States of America v. Kimberly E. Prude*, "Criminal Complaint," United States District Court, Eastern District of Wisconsin, Case No. 2:05-CR-00162-RTR (June 22, 2005).

<sup>52</sup> In the ten cases of alleged illegal felon voting in Milwaukee, one defendant was acquitted at trial and four had their charges dismissed. Among the dismissals evidence was presented which suggested defendants did not knowingly commit fraud.



information on two voter registration cards for people who did not live in her district. Those people voted to help the councilwoman win re-election by a slim margin.<sup>53</sup>

### Federal Prosecutions of Voter Registration Fraud 2002 – 2005

VOTER REGISTRATION	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
<b>False claim of eligibility</b>					
Non-citizen	4	1	3	13	21
Felon	4	1	3	2	10
<b>False statements to grand jury about (1) voter registration forgeries</b>					
Conspiracy to submit false information on (2) voter registration applications			1		1
<b>TOTAL</b>	<b>8</b>	<b>2</b>	<b>8</b>	<b>15</b>	<b>33</b>

\* All but two of those charged with making false claims about their eligibility to register (two non-citizens who were convicted) were also charged with casting a false or fraudulent ballot, as reported above.

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005* (n.d).

Registration drives in recent years have been more effective in registering low income voters than the agency-based requirements of the NVRA. Successful voter drives hold the potential for adding significant new numbers of voters to the rolls and threatening the balance of power between the two parties. Their effectiveness has made them a target for fraud allegations. Their own sporadic failings in the production of duplicate or improperly filled out registration cards, sloppy oversight, poor quality control, and occasional fraud have only fueled the allegations. Such problems are inevitable as long as voter registration is not mandated or universal.

<sup>53</sup> Press Release, "St. Martinsville Woman Sentenced in Federal Court for Voter Fraud Charges," U.S. Attorney's Office, Western District of Louisiana (January 18, 2006); available online at: [www.usdoj.gov/usao/law/news/wd/20060118c.html](http://www.usdoj.gov/usao/law/news/wd/20060118c.html).

## CASE STUDIES

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The following case studies are illustrative of the politics of voter fraud claims. They do not tell us anything about the incidence of voter fraud in American elections today. That question is central and addressed above. It has always been difficult to measure fraud or even specify it, and it is important to stress that until better evidence comes to light, we will not be able to compile comprehensive statistics on levels of cheating by voters. Researchers are hampered in studying voter fraud because government agencies fail to track it and are often unresponsive to information requests. We can, however, make educated guesses from the available evidence, and what studies there are suggest voters rarely commit fraud. It is only in the public interest that we learn from real cases of voter fraud so that we can better understand where our electoral systems are truly vulnerable. Spurious cases of fraud like those discussed here are equally instructive because they expose the shrewd and partisan manipulation that makes real election reform so difficult.

The case studies presented below demonstrate the ways these partisan interests, database and clerical errors and incompetent electoral administration are sometimes exploited to exaggerate the problem of voter fraud. The intent of the exaggeration is to intimidate the general public and even law makers into believing that American elections face a security threat from a rising tide of deceitful and criminal voters. Unfortunately, in numerous places election administration is in crisis, and in general, faces much larger challenges from changing technology, inadequate resources, poor staffing and training, and especially, partisan manipulation. These are real issues deserving of attention, good ideas, resources and a democratic spirit. They won't be adequately addressed as long as the voter fraud hoax confuses and distracts us from confronting them.

### *ACORN and the Mac Stuart Affair*

One important example of how the politics of fraud claims are used to manipulate the public about the threat of voter fraud is the political pillorying of ACORN for alleged wide scale registration fraud in the 2004 and 2006 election cycles.

ACORN (Association of Community Organizations for Reform Now) is the largest community-based organization of low and moderate income people in the U.S. It organizes locally and has developed ballot campaigns for a range of issues such as campaign finance reform and raising the minimum wage. Opponents of ACORN's minimum wage ballot initiative program deployed allegations of voter registration fraud, which then generated official investigations, media coverage and litigation, as a strategy to undermine ACORN's ability to qualify and pass referenda in several states.<sup>54</sup> One of these cases involved a disgruntled former employee named Mac Stuart who for a while became a cause célèbre of ACORN's enemies and the pundits who fuel the fraud paranoia. The Mac Stuart affair is instructive because it highlights how politics construct the fraud debate.

In November 2003, Mac Stuart was hired by Florida ACORN and put to work as a petition gatherer collecting signatures supporting the placement of a Florida Minimum Wage Amendment on the

<sup>54</sup> "ACORN Defeats Anti-Voter Legal Attacks; Group's Voter Registration Efforts Vindicated as Baseless Lawsuits Collapse," *Common Dreams Progressive Newswire* (December 14, 2005); Joni James, "Voter Fraud Charges Collapse," *St. Petersburg Times* (December 15, 2005).

2004 ballot. When Stuart was fired for suspicion of his involvement in an illegal check cashing scheme a few months later, he filed a Florida whistle blower lawsuit against ACORN claiming the organization engaged in a variety of illegal practices. He was represented by partisan attorneys at Rothstein, Rosenfeldt, Adler, a Fort Lauderdale law firm, and spoke secretly with an official at the Florida Chamber of Commerce which was in the midst of opposing ACORN's efforts to raise the state's minimum wage. Stuart provided his attorneys with 179 applications, many of them for Republican registrants, he claimed had been collected and withheld by ACORN.<sup>55</sup>

In the course of petitioning for signatures, ACORN workers conducted voter registration activities to ascertain whether signatories were registered to vote. Stuart's lawsuit claimed that petitioners were paid an additional \$2.00 for each completed registration card they collected; that ACORN illegally copied the voter registration cards its workers collected and sold its lists for a profit; that ACORN committed fraud by failing to deliver registration cards for people who designated "Republican" as their party affiliation, and otherwise collected cards from ineligible individuals such as convicted felons. Stuart maintained that in July 2004, he refused to participate in these illegal activities and was fired in retaliation under the pretext that he had attempted to cash another person's check.<sup>56</sup>

His lawyers filed a second suit against ACORN on behalf of 11 people whose names were among the allegedly withheld voter registration applications Stuart had provided.<sup>57</sup> Rothstein, Rosenfeldt, Adler attorneys claimed ACORN had deprived their clients of their constitutional right to vote and committed fraud against them.

After Stuart was fired, he held a news conference and contacted television and print news reporters claiming that "[t]here was a lot of fraud committed" by ACORN, asserting the organization knowingly submitted thousands of invalid registration cards while storing away cards for people designating their party affiliation as Republican. Stuart's allegations were immediately picked up by news organizations such as the *Washington Times*, the *Florida Times-Union*, and other Florida newspapers, and began to spread on rightwing Internet blogs. The Florida Department of Law Enforcement took the unusual step of announcing an investigation into ACORN.<sup>58</sup> In fact, for a while, Stuart's assertions were taken as fact and repeatedly reported as evidence that ACORN routinely engaged in fraud to promote its "radical political agenda."<sup>59</sup> That is, until the real facts about Stuart came to light and his case collapsed in court.

### ***Fraud charges collapse but the damage continues***

ACORN denied, and Stuart failed to prove, that canvassers were paid by the card to collect voter registration applications. ACORN's copying of voter registration applications was an element of their quality control program and well within the bounds of Florida law.<sup>60</sup> Finally, ACORN denied, and Stuart failed to produce evidence, that the organization prejudiced Republican voter registration applicants or misleadingly solicited registration cards from ineligible applicants. ACORN countersued Stuart for defamation and libel. On December 6, 2005, the matter of

<sup>55</sup> Brittany Wallman and Alva James-Johnson, "Filled-In Voter Forms Surface," *South Florida Sun-Sentinel* (October 27, 2004); Jeremy Milarsky, "Ex-Worker Sues Activist Group," *South Florida Sun-Sentinel* (October 21, 2004).

<sup>56</sup> *Mac Stuart v. ACORN*, U.S. District Court, Southern District of Florida, Miami Division, Case No. 04-2276-civ (2004).

<sup>57</sup> *Charles Rousseau, et al. v. ACORN*, U.S. District Court, Southern District of Florida, Miami Division, Case No. 04-61636-civ (2004).

<sup>58</sup> News Release, "FDLE Investigates Statewide Voter Fraud," Florida Department of Law Enforcement (October 21, 2004).

<sup>59</sup> Quoting Mike Flynn, Director of Legislative Affairs for the Employment Policies Institute; see Press Release, "ACORN's Voter Fraud in Ohio is Part of Larger Pattern," Employment Policies Institute (August 11, 2006). See, also, Meghan Clyne, "ACORN and the Money Tree," *National Review Online* (October 31, 2004); and American Center for Voting Rights, "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," ACVR Legislative Fund Report (August 2, 2005), 41-44; available online at [www.ac4vr.com/reports/072005/080205report.pdf](http://www.ac4vr.com/reports/072005/080205report.pdf).

<sup>60</sup> Nothing in Florida's election code prohibits private, third-party voter registration organizations from photocopying the voter registration applications they collect before submitting them to local elections officials.

*Mac Stuart v. ACORN* was dismissed with prejudice by a federal judge, exonerating ACORN of any and all wrongdoing.<sup>61</sup> ACORN prevailed in their counterclaims and won a judgment of defamation against Stuart.

ACORN also prevailed in the second Rothstein, Rosenfeldt, Adler suit. Shortly after it was filed, nine of the 11 plaintiffs asked to be dismissed from the case. As ACORN's lawyers deposed the remaining two plaintiffs it became clear that their lawyers had not asked them if they were qualified to vote, if they had completed the applications Stuart had given the attorneys or whether the plaintiffs were in fact Republicans. One of the two was not qualified to vote, neither remembered completing the application used as the basis for the complaint and both said that, inconsistent with their applications, they were not Republicans and never would have checked off that they were. Stuart was inconsistent in his testimony in how he obtained the applications in the first place.<sup>62</sup> This case, too, was dismissed with prejudice.

The Florida Department of Law Enforcement investigation found no evidence of illegal or fraudulent activity by ACORN. A public records request by Project Vote asking all Florida counties for any documents related to voter fraud elicited just three alleged cases of illegal activity, only one of which involved temporary ACORN workers.<sup>63</sup>

The problem is that the end of this story has received considerably less media attention than the unfounded claims of organized voter fraud on the part of ACORN. Opponents of ACORN continue to spread false rumors that the organization engages in voter fraud. For example, the Employment Policies Institute (EPI) issues dozens of press releases and "reports" attacking ACORN every year. EPI is a non-profit organization that in 2004 paid over \$600,000 in "management" fees to its executive director's publicity firm which lobbies on behalf of the hotel, restaurant, alcoholic beverages and tobacco industries.<sup>64</sup> Those industries are opposed to ACORN's efforts to raise the minimum wage in Florida and elsewhere. As late as July 2006, months after ACORN was fully vindicated in court, EPI was still claiming they engaged in a "pattern and practice" of voter fraud, citing the Mac Stuart affair as more evidence of ACORN's "widespread practice of fraud."<sup>65</sup>

### ***Voter fraud allegations used to restrict voter registration programs***

With ACORN under a cloud, Florida passed a law that carried stiff penalties for organizations failing to turn in voter registration applications later than ten days after they were collected. The law's reporting requirements were so draconian the League of Women Voters ended 77 years of voter registration activity in the state because it feared it could not comply and would be bankrupted if there were problems with just 16 registration forms collected by its volunteers. A federal judge later blocked the implementation of the law as unconstitutional.<sup>66</sup>

<sup>61</sup> Joni James, "Voter Fraud Charges Collapse," *St. Petersburg Times* (December 15, 2005).

<sup>62</sup> Telephone interview with Brian Mellor, Senior Counsel, Project Vote (April 13, 2006).

<sup>63</sup> Mellor interview (2006).

<sup>64</sup> Employment Policies Institute, "2004 Form 990, Return of Organization Exempt From Income Tax," U.S. Department of the Treasury, Internal Revenue Service, Schedule A.

<sup>65</sup> A "pattern and practice" of wrongdoing evokes conspiracy and as a legal term refers to the crime of racketeering. See, Employment Policies Institute, *Rotten ACORN: America's Bad Seed* (July 2006), 18-19; available online at [www.rottenacorn.com/downloads/060728\\_badSeed.pdf](http://www.rottenacorn.com/downloads/060728_badSeed.pdf). In fact, ACORN, along with America Coming Together, the NAACP Voter Fund, and the Ohio AFL-CIO were defendants in an Ohio lawsuit that alleged the groups conspired to engage in a series of "predicate" or related acts of forgery, document tampering and drug trafficking in order to produce fraudulent voter registration cards. See, *Rubick v. America Coming Together, et al.*, State of Ohio, County of Wood, Court of Common Pleas, Case No. 04-CV650 (2004). Plaintiffs' complaint argued each fraudulent card submitted represented a predicate act. Under the federal Racketeer Influenced and Corrupt Organizations Act or RICO, a person or group can be charged with racketeering by a U.S. Attorney if they commit any two of 35 crimes (27 federal crimes and eight state crimes) within a 10-year period and the prosecutor believes those charged committed the crimes with similar purpose or results.

<sup>66</sup> *League of Women Voters of Florida v. Cobb*, U.S. District Court, Southern District of Florida, "Order Granting in Part and Denying in Part Plaintiff's Motion for Preliminary Injunction and Granting in Part and Denying in Part Defendant's Motion to

## The Perils of List Matching

A common source of fraud claims is a list matching exercise gone wrong. The ready availability of high powered computing capacity and an ever expanding range of public records databases, have created a cottage industry of software programs and list management consultants ready to match lists for hire.

When databases contain errors or compile data differently, matching them against one another can cause a high degree of what statisticians call "false positive" errors or matches that are not really matches. A prime example is the infamous felon purge list compiled by a private firm for the Florida Secretary of State's office in 2000. That list joined data on convicted felons with the voter registration rolls using rules that matched only the first four letters of the first name, 90 percent of the last name and an approximate date of birth.<sup>67</sup> The result was a highly inaccurate list of people whom the Secretary of State wanted to prevent from voting.<sup>68</sup>

## Voting in Connecticut and beyond

In October 2002, the Republican National Committee (RNC) claimed that in the course of "updating" its voter files, it discovered over 722,000 people nationwide were registered to vote in more than one state, and that at least 600 of these had voted more than once in a single election. In Connecticut, the Secretary of State was alarmed. The RNC released a report that said 7,700 registered voters in Connecticut were also on the rolls in other states and that 54 of them had voted more than once in the 2000 election. Secretary Susan Bysiewicz, a Democrat, asked the RNC for the names of the duplicate registrants and voters. "I am surprised by the numbers," she said, "it sounds like a lot. We have two million (registered) voters, so I suppose it's possible; but in four years we haven't prosecuted one instance of voter fraud."<sup>69</sup>

At first the RNC refused to release the names and criticized Bysiewicz for not finding the problem first. When they finally turned over the names of the 54 alleged double voters, Bysiewicz found their claims baseless. Her office conducted a week long investigation of every suspect voter produced by the RNC and found that 29 had never voted in Connecticut, but did vote in another state; 18 voted in Connecticut, but not in the other state named in the report; four names had different birth dates than those on the RNC list, and three were turned over to criminal investigators because out-of-state data could not be obtained for verification.<sup>70</sup>

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Dismiss," Case No. 06-21265-CIV (August 28, 2006).

<sup>67</sup> Greg Palast, "Florida's 'Disappeared Voters': Disenfranchised by the GOP," *The Nation*, (February 5, 2001); and Palast, *The Best Democracy Money Can Buy* (Sterling, Virginia: Pluto Press, 2002), 6-43.

<sup>68</sup> The U.S. Civil Rights Commission conducted an investigation into the 2000 election in Florida and concluded, "Many people appear on the [felon purge] list incorrectly." One in seven people on the felon purge list supplied to the supervisor of the Miami-Dade election office was erroneously listed and therefore put at risk of disenfranchisement. These people were disproportionately African American. See, U.S. Civil Rights Commission, *Voting Irregularities in Florida During the 2000 Presidential Election* (2001), chapter 1. See also a disclaimer for the inaccuracy of the felon purge list posted on ChoicePoint's website ("Choicepoint's Mythical Role in Elections Past and Present," posted August 7, 2006; available online at [www.choicepoint.com/news/statement\\_08072006.html](http://www.choicepoint.com/news/statement_08072006.html)). ChoicePoint is the parent company of Database Technologies (DBT), the firm hired for the period 1998 to 2000 by the Florida Division of Elections to create its voter exception list. ChoicePoint claims, "DBT Online was not required to provide a list of exact name matches. Rather, the matching logic only required a 90 percent name match, which produced "false positives" or partial matches of the data. Moreover, the Division of Elections required that DBT Online perform 'nickname matches' for first names and to 'make it go both ways.' Thus, the name Deborah Ann would also match the name Ann Deborah. At a meeting in early 1999, the supervisors of elections expressed a preference for exact matches on the list as opposed to a 'fairly broad and encompassing' collection of names. DBT Online advised the Division of Elections that it could produce a list with exact matches. Despite this, the Division of Elections nevertheless opted to cast a wide net for the exclusion lists."

<sup>69</sup> "Thousands Registered to Vote in Two or More States," *The Associated Press State and Local Wire* (October 9, 2002).

<sup>70</sup> Press release, "Voter Fraud Claims by Republican Party Unfounded," Office of the Secretary of State Susan Bysiewicz (October 22, 2002); see also, "Bysiewicz: Double Voting Report Wrong," *The Associated Press State and Local Wire* (October 22, 2002).

### ***Double dipping in New Jersey***

A few years later, in time for the next federal election cycle, the New Jersey state Republican party (RSC) claimed it had researched voter registration files in a number of states and found evidence of multiple voting. In September 2005, the state party sent a stern letter to New Jersey Attorney General Peter Harvey threatening a lawsuit for failing to enforce state election laws governing the voter registration rolls.<sup>71</sup>

The basis for the RSC claims was their own "exhaustive investigation" of voter files from New Jersey's 21 counties, matched internally county to county on first name, last name and date of birth, as well as against the voter registration files of five other states, New York, Pennsylvania, Florida, North Carolina and South Carolina. In addition, the RSC matched the New Jersey county files against lists of deceased persons from state and federal databases and other commercially available lists. Based on their analysis, the RSC said it found evidence of widespread multiple voting in the November 2004 general election – 4,397 people alleged to have voted more than once in New Jersey, and 6,572 people who "appear to have" voted in New Jersey and another state. Moreover, the RSC claimed that 4,755 dead people had voted and warned the problem could be even worse since the state's rolls contained tens of thousands of duplicate records and the names of some well known felons in the state.

There is little doubt that New Jersey's county voter registration lists contained registration records for people who moved away or died. The existence of so-called "deadwood" on voter registration records across the country is well-known. But the presence of deadwood is not in and of itself evidence of voter fraud.

A subsequent more thorough analysis of the data files the RSC supplied to the state suggests major problems with the accuracy of the RSC analysis and therefore the veracity of their claims. The Brennan Center for Justice working with Dr. Michael McDonald, an elections expert at George Mason University, concluded that "these lists simply do not prove what they purport to prove."<sup>72</sup> Their report uncovered methodological errors in the RSC's list matching techniques, such as omitting middle initials and suffixes like "Jr.," which resulted in the listing of duplicate records for the same person then counted by the RSC as voting twice (from the same address). Mismatches of different people were presumed to be the same person, and again counted as voting twice. Statistical and database experts know that relying solely on non-unique identifiers such as name and date of birth to match records produces a high rate of false positives.<sup>73</sup> The Brennan Center/McDonald detailed analysis of the alleged 4,397 double votes recorded in the New Jersey county voter files accounted for them all as the likely product of false positives, errors in the data, duplicate records for the same person, and the statistical likelihood that two people will share the same name and birth date.

### ***Voting from the grave in Detroit***

Yet one more example of the damage flawed list matching efforts can inflict comes from an oft-cited news item appearing in the *Detroit News* in February 2006. The article, written by Lisa M. Collins, was headlined, "In Mich. Even Dead Vote," and continued, "From Holland to Detroit,

<sup>71</sup> Letter from Mark D. Sheridan to Hon. Peter C. Harvey, dated September 15, 2005. Copy in author's possession. Election administration is decentralized to the county level in New Jersey, with the Attorney General serving as the state's chief elections officer.

<sup>72</sup> The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald, "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," December 2005, 11; available online at [www.brennancenter.org/dynamic/subpages/download\\_file\\_35010.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_35010.pdf).

<sup>73</sup> Ted Selker and Alexandre Buer, "Voter Removal From Registration List Based on Name Matching Is Unreliable," Voting Technology Project – MIT Media Laboratory, October 28, 2004; available online at <http://72.14.209.104/search?q=cache:diE40vkjeLoj:www.vote.caltech.edu/reports/purging-vrdb.pdf+&hl=en&gl=us&ct=clnk&cd=1>.

votes were cast by 132 dead people; Detroit's voting records are riddled with inaccuracies, casting doubt on elections' integrity."<sup>74</sup> The allegations of voting from the grave in Detroit, a poor and majority black city, are repeatedly cited by conservative bloggers in their litany of purported evidence that voter fraud is rampant in America.

But a full reading of the article itself indicates that the News did not attribute these irregularities to voter fraud. Instead, they suggested the irregularities were more likely due to clerical errors.<sup>75</sup> Influential Republican political operative, Mark F. (Thor) Hearne, paid counsel to the Bush-Cheney 2004 re-election campaign and a member of the U.S. Elections Assistance Committee's Voter Fraud – Voter Intimidation Working Group, as well as Missouri's HAVA Advisory Commission, nevertheless repeated the misleading allegations of dead people voting in Detroit when he testified before a U.S. Senate panel in July 2006.<sup>76</sup> Versions of his testimony have appeared as a feature article in the magazine of the Bar Association of Metropolitan St. Louis,<sup>77</sup> and again as testimony given to the U.S. Elections Assistance Commission in December 2006.<sup>78</sup>

This time the list matching was not performed by an elected official and presidential campaign co-chair, as it was in Florida, or a political party, as it was in the Connecticut and New Jersey examples. It was done by a newspaper which presented no assurances that it had the kind of expertise in computer programming, statistics, or records management required to make an accurate evaluation.<sup>79</sup>

On March 5, 2006, the News printed a letter from Kelly Chesney, the Communications Director for the Michigan's Republican Secretary of State, which challenged the implication that dead people were voting in Michigan. Chesney reported that an analysis of the 132 alleged deceased voters found that this was the number of absentee ballots mailed out to voters who subsequently died in the weeks before Election Day. Of the 132 absentee ballots, she said "97 were never returned, and 27 were voted and returned prior to the voters' deaths."<sup>80</sup> This substantial correction to the implications of voter fraud in Michigan has been roundly ignored by activists who continue to cite what is now an out-dated news item reporting erroneous information.

<sup>74</sup> Lisa M. Collins, "In Mich. Even Dead Vote," *The Detroit News* (February 6, 2006).

<sup>75</sup> "Clerical errors [in the Michigan voter file are] so pervasive that it is difficult to determine in many instances who actually voted;" and citing Mark Grebner, the list vendor and political consultant upon whose research the News relied, "...Grebner says he's never found evidence of organized fraud in Detroit." See, Collins (2006).

<sup>76</sup> Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights, "Regarding the Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity," July 10, 2006.

<sup>77</sup> Mark F. (Thor) Hearne, II, "The Missouri Voter's Protection Act: Real Election Reform for All Missouri Voters," *St. Louis Lawyer*, June, 2006; available online at [www.bamsl.org/members/stlawyer/archive/06/june06.html#feature](http://www.bamsl.org/members/stlawyer/archive/06/june06.html#feature).

<sup>78</sup> Testimony of Mark F. (Thor) Hearne, II, Before the U.S. Elections Assistance Commission, "Assessing the Conduct of the 2006 Mid-term Elections," December 7, 2006.

<sup>79</sup> In fact, the News admitted in the article that they "did not review every vote cast, but instead targeted voter records based on several factors, such as the voter's birth year or voting history. Though limited and somewhat random searches were done, each search found voting records in error or highlighted names of voters who in fact could not have voted." This is hardly an adequate methodology.

<sup>80</sup> Editorial and Opinions, Special Letter, "Claims That the 'Dead' Voted Were Wrong," *Detroit News* (March 5, 2006).

## **St. Louis: More Bad Lists, Even Worse Election Administration**

St. Louis, another majority black city with budget problems, presents a case study for how the mishandling of voter registration and elections procedures can be misperceived as fraud.

### **Whose mess on Election Day 2000?**

There is little doubt that in the past St. Louis experienced election fraud and public corruption. St. Louis politics were long organized by political machines and fraud has a storied past which for some, at least, condemns the politics of the present.<sup>81</sup> In 2000, the historical memory of fraudulent elections, bribery, conspiracies, ballot tampering, and voting from the grave colored the rush to judgment when administrative mismanagement and shockingly poor record-keeping combined to produce troubling election irregularities.<sup>82</sup> Before the irregularities could be sorted out, they were seized upon by partisans. One of them, Missouri's senior Republican senator, Kit Bond, claimed the problems were evidence of a [Democratic party-driven] "major criminal enterprise designed to defraud voters," instead of what an extensive federal probe later determined to them to be – procedural incompetence and official failure to abide by the law.<sup>83</sup>

For many voters attempting to cast ballots in the 2000 presidential election, Election Day in St. Louis was a chaotic mess. Many long-time voters were told that they were not registered to vote when they showed up at polling sites where they had cast ballots in the past. To re-establish their legitimacy, many of these rejected voters were told to go down to the St. Louis Election Board's headquarters at 300 North Tucker Boulevard and cast a ballot there since the phone lines to the Board were jammed and election judges staffing the polling sites were unable to establish whether such voters' names had been moved to an "inactive" list of registered voters.<sup>84</sup>

### **The illegal "Inactive" list**

It was this controversial inactive list and the failure of the St. Louis Elections Board to comply with the NVRA that later formed the basis for a federal lawsuit alleging the Board "denied or significantly impaired the voting rights" of thousands of city voters before the election.<sup>85</sup>

Missouri law requires bi-partisan control of election administration. Local boards of election have equal representation of Democrats and Republicans as do positions staffed by the boards. The St. Louis Board has had problems maintaining accurate voter registration rolls, and leading up to the 2000 election, there were still no clear rules for specifying when a voter should be dropped from the rolls.<sup>86</sup>

<sup>81</sup> Secretary of State Matt Blunt, *Mandate For Reform: Election Turmoil in St. Louis, November 7, 2000* (July 24, 2001); available online at (herein cited as 'Blunt Report'), 39-46.

<sup>82</sup> For an excellent example of the rush to judgement, see chapter four, 'Politically Active after Death,' in John Fund's *Stealing Elections: How Voter Fraud Threatens Our Democracy* (San Francisco: Encounter Books, 2004).

<sup>83</sup> For a tale of Depression-era ballot tampering linked to public corruption and waterfront development schemes in St. Louis, see chapter 7 "The Real Foundations of the Gateway Arch," in Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition, 1742-2004* (New York: Carroll & Graf Publishers, 2005). See also, Bruce Rushton, "Dead Man Voting," *Riverfront Times* (April 24, 2002). For Sen. Bond's remarks, see Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch* (November 10, 2000), A1. According to the *Riverfront Times*, "In his letters to...two federal agencies, Bond wrote...of a 'deliberate scheme' planned in advance so unregistered voters could vote illegally: 'There is reason to believe that collusion existed to commit voter fraud and voter fraud occurred on a wide scale throughout the city of St. Louis.'" See, Safir Ahmed, "Slimin' the City: When It Comes to Election Day Problems in St. Louis, the Politicians' Rhetoric Doesn't Match the Reality," *Riverfront Times* (November 15, 2000).

<sup>84</sup> *U.S. v. Board of Election Commissioners for the City of St. Louis*, U.S. District Court, Eastern District of Missouri, "Stipulation of Facts and Consent Order," Civil Action No. 4:026V001235 CEJ (August 14, 2002), 5; (herein cited as 'St. Louis Election Board Consent Order').

<sup>85</sup> Karen Branch-Brioso and Doug Moore, "Board Denied Voters' Rights, U.S. Says: Election Officials Here Say They've Already Taken Steps to Correct Deficiencies From 2000," *St. Louis Post-Dispatch* (May 23, 2002), C1.

<sup>86</sup> Office of the State Auditor of Missouri, Board of Election Commissioners, City of St. Louis, Missouri, Report No. 2004-40 (May



Between 1994 and 2000, the Board conducted a series of mail canvasses of its voter registration rolls, none of which complied with the requirements of the NVRA.<sup>87</sup> Based on these improper canvasses, the Board removed more than 50,000 names of voters who had been on the rolls in 1996, and “made no effort to notify inactive voters that their registration status had changed, that their names would not appear on the voter registration lists provided to election judges in each voting precinct, or that they would face additional administrative steps on election day before they would be permitted to vote.”<sup>88</sup> This number represented roughly 40 percent of the total number of votes cast in St. Louis in the 1996 election, and was about twice the national and state averages for the proportion of inactive voters on the rolls.<sup>89</sup> Moreover, for all elections it conducted after 1994, the Board failed to provide precinct election judges a list of any of the voters it had designated as “inactive.” This failure created mass confusion at polling sites when many legitimate voters showed up to vote and were told they were no longer registered.<sup>90</sup>

In the days leading to the November 7, 2000, election, the unprecedented administrative reclassification of thousands of active voter registration records in the overwhelmingly Democratic city was seen by Democrats, including national party officials with the Gore-Lieberman campaign, as an illegitimate Republican party-sponsored effort to restrict Democratic voting. When he spoke at a Gore-Lieberman campaign event, Democratic Congressional hopeful William Lacy Clay, Jr., told supporters not to “let anyone turn you away from the polls,” and warned, “If it requires leaving the polls open a little longer, we’re going to get a court order to do it.”<sup>91</sup>

### **The showdown**

In fact, this is exactly what happened. Voters stood in line for hours. First, they had to check in with precinct workers, then, for those whose names were no longer on the precinct voter registration lists, they stood in another line to plead their case before their precinct’s election judge.<sup>92</sup> When many of these officials were unable to confirm their registration status with headquarters because they couldn’t get through to elections officials at the Board, they sent voters down to the Board’s office to try to resolve the problems on their own. According to news reports, “It made for a wild hour at Board’s downtown office,

where hundreds of voters turned away from the polls because they were not registered or had problems voting filled the lobby throughout the day. By early evening, the lobby was shoulder to shoulder with people who wanted to vote.”<sup>93</sup>

In the afternoon, the Democrats and the Gore-Lieberman campaign filed suit in a state circuit court requesting the polls remain open for an additional three hours to accommodate voters victimized by the inaccessible and inaccurate inactive list.

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26, 2004), 10; (herein cited as ‘Mo. State Auditor’s Report’).

<sup>87</sup> Section 8(d)(2) of 42 U.S.C. 1973gg-6(d). See, St. Louis Election Board Consent Order, 3.

<sup>88</sup> St. Louis Election Board Consent Order, 4.

<sup>89</sup> In 1996, 122,003 votes were cast in the general election in the City of St. Louis. In 2002, according to records from the Federal Election Commission, both nationwide and for the state of Missouri, 12 percent of all voters on the rolls were classified as “inactive,” compared to 22 percent in the City of St. Louis. See, Mo. State Auditor’s Report, 15.

<sup>90</sup> St. Louis Election Board Consent Order, 4.

<sup>91</sup> David Scott, “Ashcroft, Talent Decide Against Pursuing St. Louis Voter Fraud Claims,” *Associated Press* (November 8, 2000).

<sup>92</sup> The State Auditor found that the St. Louis Election Board frequently failed to secure the minimum number of precinct-level election judges as required by state law. Section 115.081, RSMo 2000, mandates four election judges, two from each major political party, for each polling place at each primary and general election, or about 1,600 election judges per major election. The Auditor found that the Board has not been able to attract more than 1,200 such judges in recent elections. See, Mo. State Auditor’s Report, 24.

<sup>93</sup> Scott (2000); see also, Ahmed (2000).

St. Louis Circuit Judge Evelyn Baker complied, but her order was overturned within 45 minutes of the regular poll closing time (7 PM) by a three-judge appeals panel. The St. Louis City Board of Elections successfully argued she lacked jurisdiction to change state law. Elections officials estimated that only about 100 extra people had been permitted to vote by Judge Baker's order. Republican officials charged there may have been a "preconceived plan" to misuse the judicial process to keep the polls open longer than their statutorily mandated closing time, as well as an "organized campaign" (by the Democrats) to abuse the procedure by which voters obtain court orders to vote, resulting in voter fraud and the casting of hundreds of illegal votes.<sup>94</sup>

In a 51-page report, Republican Secretary of State Matt Blunt outlined the possible violations of law committed in the City of St. Louis by alleged illegal voters. He referred to an unspecified conspiracy "to create bedlam so that election fraud could be perpetrated,"<sup>95</sup> and to corrupt election judges put in place to manipulate the results of the election. The report claimed that, 1) 342 persons obtained court orders to vote even though the information provided by them on affidavits suggested they were properly disqualified from voting; 2) 62 convicted federal felons and 52 Missouri felons voted in either the City of St. Louis or St. Louis County; 3) 14 votes were cast in the names of dead people; 4) that there was a high probability of multiple voting by dozens of people; 5) 79 votes were cast by people registering to vote from vacant lots; and 6) 45 election judges were not registered to vote and therefore disqualified to serve.

Many of Blunt's allegations have been disproved or significantly weakened by the discovery of major records management problems at the Elections Board that resulted in grossly inaccurate voter rolls. The *St. Louis Post-Dispatch* conducted a canvass of over 2,000 alleged vacant lot addresses from which thousands of St. Louis voters were supposedly registered and found buildings on virtually all of them. The lots had been misclassified by the city assessor or misread by elections officials. They concluded that "most of the 79 people on the state's suspect voter list from last fall probably shouldn't be on it," including the city's budget director whose ten-year old condominium was mislabeled as a vacant lot.<sup>96</sup>

The claim that more than 100 felons may have illegally voted is also unreliable since the data upon which it was based was inconclusive, as the report itself admits.<sup>97</sup> Later investigations by the State Auditor did find that three years after the 2000 election fiasco, St. Louis's voter rolls still included the names of over 2,000 felons prohibited by state law from voting or registering to vote. But the Auditor found no conspiracy to commit voter fraud on the part of voters and questioned instead why the Elections Board had failed to remove the names from their lists when they had been provided with monthly and quarterly felony conviction reports from state and federal authorities.

Like the Blunt Commission, the State Auditor also found thousands of duplicate records of voters registered to vote in St. Louis and elsewhere in the state, but only 28 instances across three recent election cycles in which a voter may have voted more than once. Without further investigation it is impossible to know whether these 28 cases represent actual illegal behavior or are more likely the product of clerical errors in the Board's voter registration files.

Throughout the months following the election, Republicans and Democrats alike called for a federal investigation, each side charging the other with fraud or with suppressing the vote. Both sides expected to be vindicated. The federal investigation provided a decisive end to the Blunt Commission's allegation that corrupt election judges allowed hundreds of patently unqualified voters to vote.

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<sup>94</sup> Blunt Report, 21-35.

<sup>95</sup> Blunt Report, 36.

<sup>96</sup> Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear To Be In Error; Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch* (November 5, 2001): A1.

<sup>97</sup> Blunt Report, 24, note 63.

### ***St. Louis Board of Elections forced into federal consent decree***

After an F.B.I. investigation that involved subpoenaing *all* of the registration and voting records from the St. Louis Elections Board for the months before the election, the Justice Department made a surprise announcement. They told the Board they were planning to sue them for violating the NVRA and threatening the voting rights of thousands of eligible voters in St. Louis by erroneously purging their records from the active voter file. The Board was forced into a consent decree that stipulated how they would change their procedures for maintaining accurate registration records, complying with federal requirements for notifying voters of their status on the list, and with handling voters whose names are not on the active voter list on election day.

Four years after the St. Louis Elections Board signed the consent decree acknowledging these failures, Mark (Thor) Hearne, the St. Louis lawyer and influential Republican activist, submitted Senate testimony that included citations to materials he produced after 2002 that ignored the Board's culpability and repeated misleading allegations of voter fraud in St. Louis.<sup>98</sup>

***Four years after the St. Louis Elections Board signed the consent decree acknowledging these failures, Mark (Thor) Hearne, the St. Louis lawyer and influential Republican activist, submitted Senate testimony that included citations to materials he produced after 2002 that ignored the Board's culpability and repeated misleading allegations of voter fraud in St. Louis.***

<sup>98</sup> Hearne (June 2006), (July 10, 2006), and (December 2006).

## ***Milwaukee: The Coup de Grâce***

In 2000, Vice President Al Gore won Wisconsin by just under 6,000 votes out of more than 2.5 million cast. Heading into the last months of the 2004 presidential campaign candidates George W. Bush and John Kerry were neck-and-neck in the polls in Wisconsin and the race was once again projected to be razor close. As a battleground state Wisconsin attracted attention from the national campaigns and a host of non-profit and political consulting organizations that poured money, staff and volunteers into the state to increase voter registration before Election Day.

By September, the voter registration drives and heightened national interest in Wisconsin as a battleground state led elections director Kevin Kennedy to report that elections officials across the state had been swamped by an unprecedented increase of over 200,000 new applications submitted by mail.<sup>99</sup> The intensified focus on Wisconsin by outside voter registration groups pouring their volunteers into the state was unparalleled in recent elections, an anomaly associated with Wisconsin's swing state status and the closeness of the presidential contest – in Wisconsin and the nation – just four years before.<sup>100</sup>

Pre-election news coverage in Wisconsin focused on three controversies: problems associated with some of the voter registration drives; a dispute between county and city officials over the number of ballots to be printed and provided to the city of Milwaukee; and a flap over thousands of alleged “bad addresses” on Milwaukee’s voter registration list.

Procedural breakdowns and discrepancies in the voter registration records were associated with what Kennedy called “volume” problems, but they helped create a climate of suspicion about the quality of record keeping at the Milwaukee elections commission and the commission’s ability to run a “clean” election.<sup>101</sup> The pre-election disputes repeatedly invoked the language of “voter fraud,” though no evidence was produced that voters were intentionally committing it. The climate of distrust made it difficult to see clerical mistakes, illegible handwriting, and workload problems leading to backlogged voter registration applications as human error or problems related to resource issues. Instead, foul-ups and mistakes were assumed to be evidence of fraud perpetrated by partisans trying to “steal elections.”

***Imperfect voter registration drives and simple human error, however, are not the same as voter fraud, nor do they inevitably lead to fraudulent voting.***

### ***Voter registration problems***

Intensified political competition and the influx of outside organizations, campaign workers and volunteers into Wisconsin in the months and weeks before the election contributed to an inevitably flawed voter registration process. Duplicate registration cards, improperly filled out cards, cards from people who are not eligible to vote or who don’t live in the district in which the card was submitted are not uncommon in the chaotic pre-election atmosphere of an intense political campaign. Imperfect voter registration drives and simple human error, however, are not the same as voter fraud, nor do they inevitably lead to fraudulent voting. As the Milwaukee case demonstrates, however, these deficiencies are easily exploited by partisans.

<sup>99</sup> Tom Kertscher, “Deputy Registrar May Have Violated State Election Law; He Says He Didn’t Witness Forms He Signed,” *Milwaukee Journal-Sentinel* (October 1, 2004), B1.

<sup>100</sup> Jenny Price, “Voter Registration Efforts Ramped Up In Wisconsin,” *Associated Press State & Local Wire* (October 10, 2004). Since voters can register to vote on Election Day, pre-election voter registration drives have been less common in Wisconsin than elsewhere.

<sup>101</sup> Price (2004).

## **How many ballots for Milwaukee?**

As stories of potential voter registration fraud circulated in the press, a political fight erupted in Milwaukee. In October the chief elections official in Milwaukee asked the county elections board for 260,000 extra ballots in anticipation of record turnout. Under Wisconsin law counties print and pay for all ballots for their localities. Milwaukee county elections officials rejected the request, with County Executive Scott Walker writing in support of the county board's decision to give Milwaukee roughly the same number of ballots it had received in the previous presidential election. In 2000, the number of ballots on hand exceeded the eligible voting population in Milwaukee by at least 200,000. But in planning for the number of ballots needed, local officials must compensate for the fact that in order to scan and count the ballots after they are cast, a bar code is assigned that prevents ballots from being counted outside the ward in which they are issued. In other words, unused ballots can't be moved around from ward to ward to cover shortfalls. Estimating probable turnout involves estimating turnout in each ward rather than citywide. This could have the effect of inflating the overall estimated number of ballots needed citywide. In 2004 Milwaukee requested 938,000 ballots for a voting population of about 424,000. The county board agreed to give the city 679,000 ballots, and a firestorm of protest erupted when County Executive Walker defended the decision by suggesting that he was concerned about potential voter fraud and didn't want people to be able to "grab" extra ballots at the polling site.<sup>102</sup>

Milwaukee Mayor Tom Barrett accused Walker of trying to foment chaos at the polls and suppress the central city vote. Barrett is a Democrat and served as a state co-chair of John Kerry's campaign, while Walker is a Republican and served as state co-chair of George W. Bush's campaign. In press reports, the dispute was repeatedly referred to as "ugly," generating partisan recrimination on both sides. On the morning of October 14, about a hundred protesters, including students, elected officials and union activists, stormed Walker's office while he was meeting with municipal election clerks, chanting, "Let the people have their voice!" and demanding that Walker issue the extra ballots to Milwaukee. Wisconsin Governor Jim Doyle intervened by asking the state elections board to help resolve the dispute and offered state aid to pay for the extra ballots. The next day Walker and Barrett held a joint press conference on the steps of Milwaukee city hall to announce a compromise between the city and county: the county would supply the extra ballots, giving the city the 938,000 ballots it originally requested, the city would split the cost, estimated at about \$40,000, and promise to return all unused ballots to the county election commission to ensure that all ballots were accounted for.<sup>103</sup> Approximately 665,000 unused ballots were later returned to the county board of elections.<sup>104</sup>

## **Inaccurate lists of "potentially fraudulent voters"**

At 4:57 p.m. on Wednesday, October 27, 2004, three minutes before the legal deadline for filing a complaint with the city elections commission, the state Republican Party challenged the validity of 5,619 names on the city voter rolls. State GOP chairman Rick Graber said, "This is a black eye on the city of Milwaukee and the state of Wisconsin. These 5,600 addresses could be used to allow fraudulent voting. Whether it's deliberate or not, something's wrong when you have people

<sup>102</sup> Dave Umhoefer and Greg J. Borowski, "City, County Spar Over Ballot Supply; Walker Cites Fraud Concerns; Barrett Cries Foul," *Milwaukee Journal-Sentinel* (October 13, 2004), A1; Greg J. Borowski and Dave Umhoefer, "Walker-Barrett Ballot Dispute Heats Up More; County, City Accuse the Other of Trying to Make Election Day Controversy," *Milwaukee Journal-Sentinel* (October 14, 2004), B1.

<sup>103</sup> Associated Press, "Governor Sends Election Board Into Milwaukee Ballot Fray," *Capital Times* (October 15, 2004), 4A; Dave Umhoefer and Steve Schultze, "Doyle Joins Rift Over Ballot Supply; Governor Seeks State Inquiry; After Protest, Walker Agrees to Review City's Request," *Milwaukee Journal-Sentinel* (October 15, 2004), A1.

<sup>104</sup> Greg J. Borowski, "665,000 Unused Ballots Returned; Review Finds City's Original Allotment Would Have Been Sufficient," *Milwaukee Journal-Sentinel* (November 25, 2004), B1.

from addresses that don't exist."<sup>105</sup> First the local elections board voted 3-0 when the board's lone Republican appointee joined the two Democrats in finding the challenge lacked sufficient evidence. The Milwaukee City Attorney, Grant Langley, conducted a review that he said in a letter to the city elections commission executive director casts "doubt on the overall accuracy" of the list supplied by the state GOP.<sup>106</sup>

Then, just four days before Election Day the state GOP demanded that Milwaukee city officials require identification from 37,180 people it said its review of the city's voter rolls turned up as living at questionable addresses. The list was produced in the same manner as the first list of 5,619 names using a computer program to match data from the city's voter database with a U.S. Postal Service list of known addresses. It included 13,300 cases of incorrect apartment numbers and 18,200 cases of missing apartment numbers. City Attorney Langley, a non-partisan officeholder, called the GOP's request, "outrageous," adding, "We have already uncovered hundreds and hundreds and hundreds of addresses on their (original list) that do exist. Why should I take their word for the fact this new list is good? I'm out of the politics on this, but this is purely political."<sup>107</sup> Langley's review did find some addresses that do not appear to exist, and the *Milwaukee Journal-Sentinel* did its own limited investigation, finding 68 questionable addresses. "Others, though," it said, "were likely to be clerical errors."<sup>108</sup>

By Monday, officials from the state GOP and the City of Milwaukee worked out an agreement on how the registrations of voters with addresses challenged by the GOP would be dealt with at the polls. The list of 37,000 was pared back down to 5,512 and the city agreed to provide poll workers with the names of people in their wards from the list whose addresses appeared to be incomplete or inaccurate. Those people would be flagged if they showed up to vote and asked to show identification and/or re-register to update their records.<sup>109</sup> At the time Wisconsin law did not require pre-registered voters to show identification to vote at the polls, they only needed to state their name and address to receive a ballot.<sup>110</sup> The compromise deal with the Republican party imposed an identification requirement not mandated by law on people who made their way onto the GOP's list.

### ***Who bears responsibility for sloppy records and procedural meltdown?***

The Journal-Sentinel reviewed Milwaukee's voting records and found a number of unexplained discrepancies. The most troubling finding from the newspaper's detailed computer analysis was that as many as 1,242 votes, three-quarters of them cast by people registering on site on election day, appeared to have come from invalid addresses. Another 1,305 registration cards with discernible flaws such as missing addresses or missing names were accepted from voters on election day who were then allowed to vote.<sup>111</sup>

<sup>105</sup> Greg J. Borowski, "GOP Fails To Get 5,619 Names Removed From Voting Lists: City Commission Says Party Didn't Prove Case; Challenges Could Move to Polling Places," *Milwaukee Journal-Sentinel* (October 29, 2004), A1.

<sup>106</sup> Greg J. Borowski, "Vote Inquiry Sharpens Focus; Prosecutors Find Many Disputed Addresses Exist," *Milwaukee Journal-Sentinel* (October 30, 2004), A1.

<sup>107</sup> Greg J. Borowski, "Election 2004: GOP Demands IDs of 37,000 in City; City Attorney Calls New List of Bad Addresses 'Purely Political,'" *Milwaukee Journal-Sentinel* (October 31, 2004): A1.

<sup>108</sup> Borowski (October 31, 2004).

<sup>109</sup> "Milwaukee Vote Deal Reached on Dubious Addresses," *The Capital Times* (November 1, 2004), 5A.

<sup>110</sup> Wisconsin allows for election day registration. Same-day registration rules require new registrants to show some form of proof of residency, or, for those lacking proof, another registered voter may vouch for them.

<sup>111</sup> Greg J. Borowski, "Over 1,200 Voters Addresses Found Invalid; Some Mistakes Easily Explained, But Milwaukee Flaws Raise Concerns About Shoddy Record Keeping, Possible Fraud," *Milwaukee Journal-Sentinel* (January 25, 2005), A1; Greg J. Borowski, "Fraud or Bumbling, Voter Problems Still Unnerving to Public," *Milwaukee Journal-Sentinel* (January 30, 2005), A1.

The newspaper opined on its own investigation and reporting:

Republicans are quick to jump on the discrepancies, real or imagined, in voting data in Milwaukee as proof of widespread fraud in the big city. In their minds, the *Journal Sentinel's* findings fit that pattern. A more plausible explanation, however, is that the findings reflect the unfortunate tendency of voting systems throughout America to err.<sup>112</sup>

By the end of January, the Mayor had appointed an internal task force to review the city's electoral procedures, and federal and county law enforcement agencies began a joint investigation into whether breakdowns in procedure, poor record-keeping, human error or fraud explained the discrepancies. On February 10, the bipartisan Joint Legislative Audit Committee of the state legislature voted unanimously to direct auditors to review voter registration and address verification procedures. All of these investigations produced clear evidence that Milwaukee's Board of Elections was overwhelmed by its own incompetence and under-staffing on election day, resulting in massive record-keeping problems. Poll workers failed to follow procedures; the number of votes cast in Milwaukee failed to match the number of people recorded as voting; same day registration cards were not filled out properly and follow up was not performed when post-registration address verification efforts identified address discrepancies; some voters were allowed to register to vote in the wrong ward.

### ***The dénouement***

The scrutiny from federal, state and local law enforcement and elections officials produced several reports, an intensive review of voter registration practices in a number of Wisconsin cities, many recommendations for improving election administration and voter registration procedures, several later-vetoed photo ID bills in the state legislature, a variety of other legislative proposals, and very little conclusive evidence of voter fraud.

Widespread ignorance among the public and elections officials alike of Wisconsin's seldom enforced felony disenfranchisement laws account for the hundreds of ineligible felons post-election audits have found voted since 2000. Alleged illegal felon voting constitutes nearly all of the "voter fraud" reported on by the media in Wisconsin over the last six years, and represents most of the handful of cases prosecuted by the federal government. Wisconsin election crime laws require the establishment of a willful effort to defraud. Most of those identified as ineligible have not been prosecuted because they were never informed that they lost their voting rights until they completed their entire sentence. Until recently, Wisconsin's voter registration application form did not clearly indicate that felons on probation or parole were ineligible to vote. One of the federal cases against the dozen or so people charged with illegal (felon) voting in the 2004 election was dropped when it was revealed that the defendant had registered to vote on election day in Milwaukee using his state offender ID card.<sup>113</sup>

<sup>112</sup> Staff, "Widen Election Day Focus," *Milwaukee Journal-Sentinel* (January 26, 2005), A14.

<sup>113</sup> Gina Barton, "A Felon But Not A Fraud: No Charges For Voter With Prison I.D.," *Milwaukee Journal-Sentinel* (March 17, 2006). See, *United States of America v. Derek G. Little*, "Motion to Dismiss Indictment," United States District Court, Eastern District of Wisconsin, Case No. 05-CR-172 (LSA) (March 14, 2006).

# POLICY RECOMMENDATIONS

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This report has illustrated how the public is being manipulated about the problem of voter fraud.

Voting is a right, it's not a gift and it's not a privilege. Moreover, we can't have a democracy without the voters, and that means all voters, contributing to self-government. Therefore, layers upon layers of rules and bureaucracy to administer elections do not serve us well if they hinder electoral participation, which they do especially when the electorate expands. It is simply naïve to argue that the rules have nothing to do with turnout. On the other hand, it's true, the rules don't on their own increase turnout – issues, passion, competition, good candidates, effective communication and a diverse media – these are some of the factors that contribute to higher levels of electoral participation. But high interest campaigns and elections present precisely those conditions under which a complex regime of rules will have a depressing effect. When voter interest is high, partisans exploit the rules to determine the size and shape of the electorate they want.

Today partisans use the threat of voter fraud as an intimidation tactic. As our history shows, it is an old and reliable instrument for shaping the electorate by influencing the rules and procedures governing access to the vote. It is difficult to openly suppress voting in a democratic culture. The threat of fraud, however, if it's real, is enough to scare most people into accepting new rules that undermine the electoral participation of other voters - the unfortunate price, we are told, we must pay to keep our elections clean. The unraveling logic of this argument should be obvious. Unfortunately, reason flies out the window when we're scared.

We need better data, better election administration, transparency and more responsible journalism to improve public understanding of the legitimate ways in which electoral outcomes can be distorted and manipulated. Specifically:

1. States' chief elections officers should collect and maintain data on fraud allegations and enforcement activities and routinely report this information to the public. The data and methods used to collect it should be transparent and in the public domain.
2. To protect the right to vote and improve public confidence in the electoral process improvements to statewide, centralized voter registration databases must continue. Accurate registration records and methods for instantaneously certifying voter eligibility are the best defense against voter fraud.
3. To minimize mistakes, clerical errors, and duplication, state and local elections officials need to develop good, cooperative working partnerships with third party voter registration organizations that do a service to democracy by encouraging more people to register and vote.
4. States can go further and reduce the need for registration drives by fully implementing the agency-based voter registration requirements of NVRA and instituting same-day voter registration procedures. Ultimately, the states and federal government should provide a means to automatic universal voter registration.
5. To improve public understanding of voter fraud and more balanced reporting, state elections and law enforcement officials should educate journalists to ask for and recognize evidence of fraud when reporting on fraud allegations.



# APPENDIX: HOW TO IDENTIFY VOTER FRAUD

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Elections are instruments of democracy. They are the mechanisms for choosing representatives of the people's will, and they are widely regulated by law. Many different actors participate in the electoral process. Legislators and administrators make and implement the rules, candidates organize campaigns to run for office, voters cast their ballots, administrators count the ballots and elected officials certify the results.

The voters' role is simple – to make choices about candidates by casting legal ballots. Voters don't set deadlines for registering to vote, nor do they make the rules about how ballots are designed, displayed, or marked. They don't decide where the polls are located, when they are open, or what voting technology will be used. Voters have nothing to do with receiving completed ballots, determining valid ballots, counting or recounting ballots, tallying election results, or ensuring that the vote totals are accurate.

***Voters, like all other actors or groups in the electoral process, can only corrupt that part to which they have access.***

Voters, like all other actors or groups in the electoral process, can only corrupt that part to which they have access. They can do this directly, for example, by providing false information about their identity and/or eligibility in order to vote illegally, or indirectly through participation in a conspiracy, usually with others who have more authority and access to the marking and counting of ballots than the voters themselves possess.

***If the alleged fraud does not involve voters it should not be considered voter fraud.***

The first step in confronting any allegation of voter fraud is to identify who is alleged to have committed the fraud and to figure out if any voters are involved. If the alleged fraud does not involve voters it should not be considered voter fraud.

The second step is to identify which part of the electoral process was corrupted by fraud. Given their limited access, voters can only corrupt the registration and voting phases. They can't corrupt the vote tallying and counting phases where most election fraud has occurred in the past because they lack access to votes after they've cast them.<sup>114</sup> A fraudulent ballot

<sup>114</sup> The most thorough analysis of election fraud in the early twentieth century is the landmark 1929 study of voter registration procedures for the Brookings Institution by the inventor of the punch card voting machine, Joseph P. Harris. See, Joseph P. Harris, *The Registration of Voters in the U.S.* (Baltimore: The Lord Baltimore Press, 1929). Harris was a public administration reformer who promoted government modernization and the use of scientific administrative practices to remove politics from the business of governing. He concluded that elections were more badly managed than just about any other area of public administration and that political machines were responsible for much of the fraud he analyzed. The case studies of election fraud in Chicago, Philadelphia and Louisville, Kentucky, Harris presents all involved large scale conspiracies orchestrated by politicians and political machines which Harris thought rigged elections through ballot box stuffing and the manipulation of the count. His conclusion that most fraud occurred during the vote counting stage spurred him to invent the Votomatic Vote Recorder (the first punch card voting machine) which Harris hoped would reduce opportunities for election fraud by removing the ballot counting function from precinct workers. See, Joseph P. Harris, *Oral History*, interview by Harriet Nathan, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, California, 1980, available from <http://bancroft.berkeley.edu/ROHO/Vote/>.

is one that was not cast legally. But the definition of a legal ballot varies according to the rules that qualify eligible voters to vote and govern the procedures for casting a ballot in the different states.

### ***Fraud in Voter Registration***

To its earliest proponents, voter registration was intended as an anti-fraud safeguard. Registration fraud is typically punished less severely than fraud in voting and this is as it should be. What matters most to the integrity of electoral outcomes is the casting and counting of an illegal ballot. A person who provides false information on a voter registration application but never casts a ballot is less of a threat to electoral integrity than one who negates or dilutes the will of the voters by casting an illegal ballot. This is not to say that voter registration fraud is a negligible crime or should be tolerated. The available evidence suggests voter registration fraud is rare, but when it does occur, if it goes undetected it can compromise the accuracy of the voter rolls. When it's caught it burdens the elections and law enforcement officials who find it and must address it.

Since voters can perpetrate it, even if they rarely do, for purposes of this report we will consider voter registration fraud a form of voter fraud, along with all forms of illegal voting. However, when voter registration fraud is committed by a campaign volunteer or a paid canvasser, we should not consider the crime 'voter fraud.'<sup>115</sup> Doing so only adds to public confusion about what should be done to eliminate opportunities for fraud.

### ***Fraud in Voting***

Under most state and federal laws a vote is considered illegal when it is cast improperly by an unqualified or ineligible voter. The voter must be qualified and the vote cast according to the rules governing the act of voting under state and federal law. Both elements – the voter and the act of voting – must be legal or the vote is illegal.

### ***The difference between an eligible and a qualified voter***

To be legal, an *eligible* voter must be *qualified* by the state to vote. This raises questions about the difference between an 'eligible' voter and a 'qualified' voter. The centuries long struggle for the franchise in the U.S. established a common law right to vote and constitutional bans on voter discrimination by race, color, gender, or age (over the age of 18), but no constitutional right to vote. The lack of an affirmative right to vote in the Constitution and the delegation of authority to the states to determine voter qualifications and oversee election administration are peculiar features of American democracy. The Constitution explicitly grants the states the power to set voter qualifications, reserving authority to Congress to regulate only "the times, places and manner of holding elections for Senators and Representatives."<sup>116</sup>

***"Eligible" voters are those whose age and citizenship status, and in some cases absence of a felony conviction allows them to be credentialed or "qualified" by the states as legitimate or legal voters. "Qualified" voters, therefore, are those eligible voters who complete a state's procedures for casting a legal ballot.***

Because the Constitution vests power to 'qualify' voters in the states, as long as they do not unconstitutionally discriminate against people by race, color, gender or age, they may make different rules for qualifying voters, and they do. This is why the definition of a legal vote varies across the states, especially with regard to residency and felony disqualification rules. Consider,

<sup>115</sup> For an example of how the voter fraud label is commonly misused, see "2 Signature Gatherers Sentenced in Orange County Voter Fraud Case," *Associated Press* (1/4/07), 17 News Online, available online at [www.kget.com/news/state/story.aspx?content\\_id=6b487526-37ac-43e9-a5b0-496674b9d5ef](http://www.kget.com/news/state/story.aspx?content_id=6b487526-37ac-43e9-a5b0-496674b9d5ef).

<sup>116</sup> But, "the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." See, U.S. Constitution, Article I, section 4.

for example, the ballot of an otherwise eligible and qualified voter with a felony conviction who is no longer under state supervision. If that citizen lived in Maine and registered to vote by or on Election Day, his or her vote would count as a legal ballot. If that citizen lived and voted in Florida where a felony conviction eliminates the right to vote until clemency is granted, he or she could be prosecuted for casting an illegal ballot.

In fact, states make lots of rules for qualifying voters. The most important is the requirement that all eligible voters register. All states except North Dakota require eligible voters to register before casting a ballot.<sup>117</sup> Thus, all states except North Dakota qualify eligible voters by requiring them to meet certain conditions in order to register their names on the rolls of legitimate or valid voters. Voter registration, therefore, is a means of voter qualification, and in nearly all states, otherwise eligible voters must be registered properly or the vote they cast is illegal.<sup>118</sup> In addition, ineligible voters, such as those disqualified by state law for a felony conviction or because they do not possess U.S. citizenship,<sup>119</sup> could register to vote either mistakenly or by deceit, thus appearing on the voter rolls as 'qualified' voters despite their ineligibility. Their votes would be treated as legal votes when in fact they would be illegal.

There are a few known cases of ineligible persons such as non-citizens making it on to the voter registration rolls due to a misunderstanding about who has the right to vote in American elections, or to mistakes made by elections officials who misinformed such applicants or failed to note their lack of citizenship. One involves the case of Mohsin Ali, a long-time legal permanent resident living in Florida at the time of his arrest for "alien voting." He pleaded guilty but claimed a clerk in the Department of Motor Vehicles issued a voter registration application to him when he renewed his license. In a letter begging the judge to intercede with immigration authorities considering Ali's deportation back to Pakistan, Ali claimed he told the clerk he was a Florida resident but not a U.S. citizen.<sup>120</sup> He states that the clerk told him as the husband of an American citizen he was eligible to vote. When Ali received a voter registration card in the mail he assumed he was qualified to vote and voted in the 2000 presidential election.<sup>121</sup>

Voters have limited access to the electoral process, but where they do interact with it they confront an array of rules that can trip them up and change depending on where they live. The more rules and restrictions, the more stumbling blocks voters face when trying to cast legal ballots. For example, in Pennsylvania where a voter must qualify with an excuse when applying for an absentee ballot, it is illegal to vote that ballot if the voter's plans change and he or she remains physically present at home (barring a disability that prohibits the voter from visiting the polling place). A voter must apply for an absentee ballot a full week before Election Day. What happens if plans change or the business trip gets canceled and the voter is present on Election Day, after all? If that voter then mails in the ballot instead of striking out for the line at the polling place, that voter is breaking the law in Pennsylvania. Who knew? Who wouldn't make

<sup>117</sup> North Dakota repealed its voter registration law in 1951. To vote in North Dakota eligible voters must have proper identification showing their name and current address. If they lack identification, they may still vote by filing a voter's affidavit attesting to their identity and address, or if a poll worker knows them and can vouch for them. Poll workers use lists of previous voters to track voting on Election Day.

<sup>118</sup> The courts have dealt with the question of whether voter registration is an unconstitutional burden on the vote by using a balancing test, weighing the alleged burden on rights against a state's legitimate interest in ensuring electoral integrity. State laws mandating voter registration have been upheld repeatedly by the Supreme Court as reasonable administrative burdens on the right to vote ("a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot," *Marston v. Lewis*, 410 U.S. 679, 680, (1973)).

<sup>119</sup> Federal law does not require persons be U.S. citizens to vote, but all states do, as it is their constitutional prerogative to set citizenship as a condition for voter eligibility and qualification.

<sup>120</sup> Letter from Mohsin Ali to the Honorable William C. Sherrill, Jr., Chief U.S. Magistrate Judge, U.S. District Court, Tallahassee, Florida; dated November 3, 2006. The judge denied Ali's request.

<sup>121</sup> *U.S. v. Mohsin Ali*, U.S. District Court, Northern District of Florida, Tallahassee Division, Case No. 4:05cr47-WCS.

things easier and drop the ballot in the mailbox? The more complex are the rules regulating voter registration and voting, the more likely voter mistakes, clerical errors, and the like will be wrongly identified as “fraud.”

*Eligible* voters may nevertheless fail to *qualify* as legal voters because they fail to register properly – usually their ballots would be considered illegal. Illegal ballots, however, may also result from qualified – or properly registered – voters failing to follow the rules for casting a ballot under state law. As the following table suggests, expanding rules create more ways to cast an illegal ballot than a legal one.

**Voter Eligibility, Voter Registration and Legal Balloting**

Voter	Registered	Voter Is	Vote Is Cast	Ballot
Eligible	Yes	Qualified	Properly	Legal
			Improperly	Illegal
Not Eligible	No	Not Qualified	Properly or Improperly	Illegal
	Yes	Improperly Qualified	Properly	Illegal
			Improperly	Illegal
	No	Not Qualified	Properly or Improperly	Illegal

As states and localities continue to loosen restrictions on the time and place for casting a legal ballot, qualified voters will face more options for casting their ballots. The lack of uniformity increases complexity of the rules and unintended consequences proliferate. For example, the growth of early and mail voting is generally considered positive because these reforms make voting more convenient by opening up more avenues for casting legal ballots. Voters in many

states may now cast their ballots at a town clerk’s office two weeks before the election, by mail, or in person at the polling booth on Election Day. But one consequence of expanding voting opportunities is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.

***But one consequence of expanding voting opportunities is a corresponding increase in opportunities for casting unintentionally illegal ballots if administrative tracking and auditing systems are flawed.***

In fact, several recent cases of alleged voter fraud involved legal voters who mailed in their ballots and then showed up at the polls on Election Day because they either forgot mailing in their ballots or, distrusting the absentee balloting process, wanted to be sure that their votes were counted by voting again. They used their real names to try to vote twice because they were confused.<sup>122</sup> Poor record management on the part of elections officials was the problem, but voters got the blame. As the options and rules expand they increase the possibility that voter misunderstandings will be labeled ‘voter fraud.’

<sup>122</sup> See, for example, Susan Greene and Karen Crummy, “Voter Fraud Probed in State; Double Dippers, Felons Targeted,” *Denver Post* (March 24, 2005).

# ABOUT THE AUTHOR

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Lorraine C. Minnite holds a Ph.D. in political science and teaches courses on American and urban politics at Barnard College, in New York City. In 2003, she co-authored (with David Callahan), *Securing the Vote: An Analysis of Election Fraud* for Dēmos: An Network for Ideas and Action, and is currently finishing a book on the politics of voter fraud in contemporary American elections.



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March 6, 2007

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**Claims of “Voter Fraud” Often Manufactured, Exaggerated for Political Purposes,  
Says New Report from Project Vote**

(Washington, DC) Widespread “voter fraud” is a myth promulgated to suppress voter participation, according to a new Project Vote report released today. “The Politics of Voter Fraud” finds that fraudulent voting, or the intentional corruption of the voting process by voters, is extremely rare. Yet, false or exaggerated claims of fraudulent voting are commonly made in close electoral contests, and later cited by proponents of laws that restrict voting. The report is authored by Lorraine Minnite, Ph.D., Barnard College, Columbia University.

“I set out to study what situations generated incidents of voter fraud and, after researching the laws and examining the existing evidence, I found that voter fraud did not occur with enough frequency or was enough of a significant factor in elections to model or study,” Minnite said. “Instead, in this report, I examined circumstances in which claims of voter fraud were made and how they came to receive widespread public attention.”

Analysis of federal government records concludes that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of fraudulent voting, culled from interviews, reviews of newspaper coverage and court proceedings paints a similar picture.

“We shouldn’t base public policy on urban legends but on sound facts. It’s clear from this report that fraudulent voting isn’t threatening the integrity of our elections; we *do* know that erecting additional bureaucratic obstacles to voting discourages legitimate voters,” said Project Vote Deputy Director Michael Slater.

The report includes case studies in which accusations of “voter fraud” received widespread media attention. Each one demonstrates the way in which partisan politics exploit administrative errors or minor problems to create the illusion of systemic fraud.

While there is little evidence of fraudulent voting, the case is clear that voting rules restrict voter turnout. A recent study by the Eagleton Institute of Politics at Rutgers University found that laws requiring voters to show a document establishing identity reduce minority voter turnout. Researchers found that in the 2004 election, all voters, in states requiring voters to present documentation establishing their identity at the polls, were 2.7 percent less likely to vote than voters in states where no documentation was required. Latinos were 10 percent less likely to vote, Asian-Americans 8.5 percent less likely to vote and African Americans 5.7 percent less likely to vote.

A survey by the Brennan Center for Justice at New York University School of Law found that 11 percent of Americans, more than 21 millions citizens, did not have a current

030415

government-issued photo ID. Low-income, minority and elderly Americans disproportionately lack current government-issued photo ID.

To help improve public understanding and make the electoral system as efficient as possible, the report recommends: better voter fraud data collection and dissemination by states' chief elections officers, maintenance of accurate voter registration databases, cooperative relationships between non-partisan civic groups engaged in voter registration and elections officials, education of the media, and the institution of automatic universal voter registration.

###


*Project Vote is the leading technical assistance and direct service provider to the civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and participation in low-income and minority communities.*

To download the report, go to:

[http://projectvote.org/fileadmin/ProjectVote/Publications/Politics\\_of\\_Voter\\_Fraud\\_Final.pdf](http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf)



Jeannie Layson /EAC/GOV  
12/14/2006 03:19 PM

To Gracia Hillman/EAC/GOV@EAC  
cc  
bcc  
Subject Re: People For 


It is attached. I think Tom also sent them a letter, which resulted in the FOIA request.



PFAW FOIA final.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
12/14/2006 02:17 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Re: People For 

Yes, please send me our response to the FOIA request.

-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 12/14/2006 01:40 PM  
**To:** Gracia Hillman  
**Subject:** Re: People For

Commissioner,  
I responded to a FOIA request from them on Nov. 27. They asked for the draft fraud report prepared by Tova and Job, which we did not provide on the grounds that it was a pre-decisional document. Would you like me to paste the contents of the letter in an email to you?

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
12/14/2006 12:07 PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, "Donetta

030417



Davidson" <Ddavidson@eac.gov>, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, "Jeannie Layson"  
<jlayson@eac.gov>, "Karen Lynn-Dyson"  
<klynn-dyson@eac.gov>  
cc "Sheila Banks" <sbanks@eac.gov>

Subject People For

I know that People For the American Way delivered petitions to EAC about release of the Fraud report but I need to know what other communications EAC has had with People For about the study.

Was it represented on the study's working group? If so, by whom? Did they write to us and did we answer? Did anybody from there talk with anybody at EAC about the study and our work? Thanks.

-----  
Sent from my BlackBerry Wireless Handheld

030418



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW – Suite 1100**  
**Washington, DC 20005**

November 27, 2006

Mr. Ralph Neas  
President  
People for the American Way  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

Dear Mr. Neas:

Thank you for your Freedom of Information Act (FOIA) request regarding the U.S. Election Assistance Commission's research on voter fraud and intimidation. The document you requested on voter fraud and intimidation is protected from release under FOIA. Specifically, the responsive information is protected by the Deliberative Process Privilege and exempted from release under 5 U.S.C. §552(b)(5). As you may know, the Deliberative Process Privilege protects intra-agency documents that are (1) predecisional in nature and (2) part of the deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter before that matter is adopted. Such documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors; (2) to protect against premature disclosure of proposed policies; and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.

The report you have requested is an intra-agency document that is not yet complete and has not been reviewed and approved by the Commissioners (the relevant policy makers). An initial draft of the document was created by two contract employees with the support of EAC staff. The contract employees were hired pursuant EAC's authority to hire consultants and experts under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). Individuals hired under this authority enter into an employment relationship with the EAC. The contract employees at issue were closely supervised by an EAC program director who participated directly in the project. For example, the supervisor approved, facilitated, scheduled and participated in interviews conducted for the project. Further, the contract employees were provided research materials and other support from EAC law clerks and staff. Communications with contract employees are intra-agency communications for the purposes of FOIA.<sup>1</sup> Work continues to proceed on the draft.

---

<sup>1</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) and Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

Similarly, the document you have requested constitutes a recommendation on a policy matter. The purpose or subject of the draft report at issue is to make an EAC determination on how voter fraud should be studied by the Agency. This is to be done by (1) assessing the nature and quality of information that presently exists on the subject matter; (2) defining the terms and scope of EAC study as proposed under HAVA; (3) determining what is to be studied; and (4) determining how it is to be studied. Clearly, EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources are matters of Agency policy. This policy can only be made by the EAC's duly appointed Commissioners. This has not yet been done. Thus, any draft created by staff is a proposal or recommendation on a policy matter and clearly both predecisional and deliberative.

For these reasons, the draft document you have requested is exempt from release. We expect the report to be made final and approved by the Commission in December. It will be made public at that time. Upon its release you may obtain a copy of it at [www.eac.gov](http://www.eac.gov).

The EAC has decided to waive the processing fees for your request. If you interpret any portion of this response as an adverse action, you may appeal it to the Commission. Your appeal must be in writing and sent to the address noted on the above letterhead. Any appeal submitted must be postmarked no later than 60 calendar days from the date of this letter. Please include your reasons for reconsideration and attach a copy of this letter.

Sincerely,

Jeannie Layson  
Director of Communications  
U.S. Election Assistance Commission



"Rick Hasen"  
<rick.hasen@lls.edu>  
12/13/2006 04:09 PM

To jlayson@eac.gov  
cc  
bcc

Subject Re: Your Dec. 11 Posting

History: This message has been replied to

it is up. thanks.  
Rick

jlayson@eac.gov wrote:

Mr. Hasen,  
Thank you for the prompt response. Yes, if you would consider posting the email, I would appreciate it. And if you want to leave out the last paragraph, that's fine as it does not contain any information about the fraud report, which was the topic of your posting and my response.

Yes, I am aware that you are not a journalist. With the emergence of blogs, the lines have indeed become blurred. Some bloggers adhere to professional standards similar to those followed by journalists, such as contacting sources or entities to verify facts before posting them. I just wanted you to know that I see it as part of my job to provide information to reporters, people who publish information, and the public at large.

Again, please don't hesitate to contact me if I can be of assistance, either after or before you post to your blog. Thanks again.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

"Rick Hasen" <[Rick.Hasen@lls.edu](mailto:Rick.Hasen@lls.edu)>

12/13/2006 02:44 PM

To [jlayson@eac.gov](mailto:jlayson@eac.gov)  
cc  
Subject Re: Your Dec. 11 Posting

I'd be happy to print your email on my blog (leaving off your phone number, of course). Let me know if you'd like me to do so.

030421

As far as contacting you before I blog about the FEC, I don't think I see myself as a journalist who has an obligation to do so before expressing my opinions. However, I do welcome you sending me comments, and generally speaking I'd be happy to reproduce those comments on the blog if you like.

Rick

[jlaysen@eac.gov](mailto:jlaysen@eac.gov) wrote:

Mr. Hasen,

I write to point out incorrect information you posted on your website on December 11, 2006. You wrote: "Note what's missing compared to the earlier version leaked to the USA Today Newspaper." No one at the EAC leaked anything to USA Today. The reporter asked for a copy of the staff report about the fraud research that was presented at a public meeting in May to our Board of Advisors and the Standards Board, and the EAC provided it to him. This information was presented and discussed at a meeting that was open to the public, so we provided materials distributed at the meeting to anyone who requested it. The staff report about the fraud project was also distributed to the members of both advisory boards. Go [here](#) to view the Federal Register notice about the public meeting at which this project and many others were discussed.

The statement you attribute to one of the consultants is absolutely correct. As stated by their contract, these consultants were hired so that the EAC could "...obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation."

As for your reference to what's "missing compared to the earlier version," the report contains the summaries of every interview conducted by the consultants as well as every book, article, report or case that was reviewed. It does not contain the synopsis of those interviews, which were written by the consultants. EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. These are not, nor should they be, determinations or decisions made by consultants. The EAC has the ultimate responsibility for the reports it issues, and it is incumbent upon the agency to conduct due diligence to ensure reports, data or any other information is complete and accurate before it is adopted by the Commission.

As someone with a public platform who writes about matters regarding election administration, I would appreciate it if you would consider extending the same professional courtesy most journalists do and contact the agency if you have questions or concerns in the future about EAC policy or actions. You may reach me directly at 202-566-3103 if I can ever be of assistance. Thank you for your consideration in this matter.

Sincerely,

Jeannie Layson  
Director of Communications  
US Election Assistance Commission

Jeannie Layson  
U.S. Election Assistance Commission

030422

1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

--

Rick Hasen  
William H. Hannon Distinguished Professor of Law  
Loyola Law School  
919 Albany Street  
Los Angeles, CA 90015-1211  
(213)736-1466  
(213)380-3769 - fax  
[rick.hasen@lls.edu](mailto:rick.hasen@lls.edu)  
<http://www.lls.edu/academics/faculty/hasen.html>  
<http://electionlawblog.org>

--

Rick Hasen  
William H. Hannon Distinguished Professor of Law  
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<http://www.lls.edu/academics/faculty/hasen.html>  
<http://electionlawblog.org>

030423

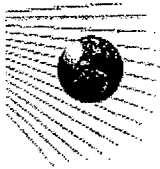


Gracia Hillman/EAC/GOV  
12/13/2006 03:21 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc d davidson@eac.gov, ggilmour@eac.gov, Jeannie Layson/EAC/GOV@EAC, jthompson@eac.gov, psims@eac.gov, twilkey@eac.gov  
bcc  
Subject Re: Fw: Your Dec. 11 Posting

**Good catch!!**

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
12/13/2006 03:19 PM

To Jeannie Layson/EAC/GOV@EAC  
cc d davidson@eac.gov, ggilmour@eac.gov, ghillman@eac.gov, jthompson@eac.gov, psims@eac.gov, twilkey@eac.gov  
Subject Re: Fw: Your Dec. 11 Posting

Yes, make him post it...and make sure he understands we are the EAC--not the FEC (as he refers in his e-mail to you).

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Jeannie Layson/EAC/GOV

12/13/2006 02:52 PM

To pdegregorio@eac.gov, ghillman@eac.gov, d davidson@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, ggilmour@eac.gov, psims@eac.gov  
Subject Fw: Your Dec. 11 Posting

030424



Commissioners,  
Would you like me to request that he post my response?

----- Forwarded by Jeannie Layson/EAC/GOV on 12/13/2006 02:48 PM -----  
"Rick Hasen" <Rick.Hasen@lls.edu>

12/13/2006 02:44 PM

To jlayson@eac.gov  
cc  
Subject Re: Your Dec. 11 Posting

I'd be happy to print your email on my blog (leaving off your phone number, of course). Let me know if you'd like me to do so.

As far as contacting you before I blog about the FEC, I don't think I see myself as a journalist who has an obligation to do so before expressing my opinions. However, I do welcome you sending me comments, and generally speaking I'd be happy to reproduce those comments on the blog if you like.

Rick

jlayson@eac.gov wrote:

Mr. Hasen,

I write to point out incorrect information you posted on your website on December 11, 2006. You wrote: "Note what's missing compared to the earlier version leaked to the USA Today Newspaper." No one at the EAC leaked anything to USA Today. The reporter asked for a copy of the staff report about the fraud research that was presented at a public meeting in May to our Board of Advisors and the Standards Board, and the EAC provided it to him. This information was presented and discussed at a meeting that was open to the public, so we provided materials distributed at the meeting to anyone who requested it. The staff report about the fraud project was also distributed to the members of both advisory boards. Go [here](#) to view the Federal Register notice about the public meeting at which this project and many others were discussed.

The statement you attribute to one of the consultants is absolutely correct. As stated by their contract, these consultants were hired so that the EAC could "...obtain consulting services from an individual who

030425

can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation."

As for your reference to what's "missing compared to the earlier version," the report contains the summaries of every interview conducted by the consultants as well as every book, article, report or case that was reviewed. It does not contain the synopsis of those interviews, which were written by the consultants. EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. These are not, nor should they be, determinations or decisions made by consultants. The EAC has the ultimate responsibility for the reports it issues, and it is incumbent upon the agency to conduct due diligence to ensure reports, data or any other information is complete and accurate before it is adopted by the Commission.

As someone with a public platform who writes about matters regarding election administration, I would appreciate it if you would consider extending the same professional courtesy most journalists do and contact the agency if you have questions or concerns in the future about EAC policy or actions. You may reach me directly at 202-566-3103 if I can ever be of assistance. Thank you for your consideration in this matter.

Sincerely,  
Jeannie Layson  
Director of Communications  
US Election Assistance Commission

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

--

Rick Hasen  
William H. Hannon Distinguished Professor of Law  
Loyola Law School  
919 Albany Street  
Los Angeles, CA 90015-1211  
(213) 736-1466  
(213) 380-3769 - fax  
[rick.hasen@lls.edu](mailto:rick.hasen@lls.edu)  
<http://www.lls.edu/academics/faculty/hasen.html>  
<http://electionlawblog.org>

030426

Jeannie Layson /EAC/GOV  
12/13/2006 10:14 AM

To pdegregorio@eac.gov, ghillman@eac.gov,  
ddavidson@eac.gov  
cc twilkey@eac.gov, psims@eac.gov, jthompson@eac.gov,  
ggilmour@eac.gov, bwhitener@eac.gov  
bcc

Subject Rick Hasen response-need your approval

Commissioners,

I want to respond to Rick Hasen's post regarding EAC and the fraud report. My suggested response is below, and his original post follows. Please let me know if you agree that I should attempt to correct the misinformation he posted. If so, please let me know if you approve of my suggested response. Thank you.

Mr. Hason,

I write to point out incorrect information you posted on your website on December 11, 2006. You wrote: "Note what's missing compared to the earlier version leaked to the USA Today Newspaper." No one at the EAC leaked anything to USA Today. The reporter asked for a copy of the staff report about the fraud resesarch that was presented at a public meeting in May to our Board of Advisors and the Standards Board, and the EAC provided it to him. This information was presented and discussed at a meeting that was open to the public, so we provided materials distributed at the meeting to anyone who requested it. The staff report about the fraud project was also distributed to every member of both advisory boards. Go here to view the Federal Register notice about the public meeting at which this project and many others were discussed.

The statement you attribute to one of the consultants is absolutely correct. As stated by their contract, these consultants were hired so that the EAC could "...obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation."

As for your reference to what's "missing compared to the earlier version," the report contains the complete summaries of every interview conducted by the consultants as well as every book, article, report or case that was reviewed. It does not contain the synopsis of those interviews, which were written by the consultants. EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. These are not, nor should they be, determinations or decisions made by consultants. The EAC has the ultimate responsibility for the reports it issues, and it is incumbent upon the agency to conduct due diligence to ensure reports, data or any other information is complete and accurate before it is adopted by the Commission.

As someone with a public platform who informs the public about matters regarding election administration, I would appreciate it if you would extend the same professional courtesy most journalists do and contact the agency in the future if you have questions or concerns about EAC policy or actions. You may reach me directly at 202-566-3103. I appreciate your consideration in this matter.

Sincerely,  
Jeannie Layson  
Director of Communications  
US Election Assistance Commission

**More on FL-13, and a Role for the EAC?**

When I saw [this headline](#) on the *Sarasota Herald Tribune* web page, I

030427

thought it must have been about the FL-13 race.

Over on the election law listserv, Doug Johnson, responding to my commentary calling for the House to investigate the problems and declare a revote in the FL-13 race, suggested that perhaps the EAC is better situated to conduct an investigation than the House of the problems in the FL-13. I'm afraid we might not be able to count on the EAC to conduct an investigation that is well-funded, tough, and fair. Politics appears to be creeping in to decisions of the EAC's advisory board, and there's real concern about the EAC's vote fraud report. Note what's missing compared to the earlier version leaked to the USA Today newspaper. Tova Wang, who authored the draft report for the EAC, issued the following statement to me: "My co-consultant and I provided the EAC with a tremendous amount of research and analysis for this project. The EAC released what is their report yesterday."


The EAC has also lost two commissioners, one Republican and one Democrat, who appeared to be tough-minded and fair. I am very worried about the fairness and non-partisanship of the new rumored nominees. In short, the EAC has to prove it is up to the task of fair and serious inquiry before it could be trusted with something like an investigation of the FL-13.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030428



Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc  
bcc  
Subject Re: Draft response to Tova Wang 

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

**BTW, who will sign the letter ?**

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
[www.eac.gov](http://www.eac.gov)

**CONFIDENTIALITY NOTICE:** This email message is from a federal agency. Its contents and all attachments, if any, are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this message is strictly prohibited. If you received this message in error, please notify the sender immediately by replying to this email and



delete this message from your computer. Tova Wang, Dec06.doc

030429

December 8, 2006

Ms. Tova Wang  
(Address)  
(Address)

Dear Ms. Wang:

We are writing in response to your December 7, 2006 memorandum. As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. Rather than provide the synopsis of these interviews, EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

Upon reviewing initial information about the Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided at the working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

**Deleted:** The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public. ¶

**Deleted:** ¶  
In its December 2006 report on voting fraud and voter intimidation,

**Deleted:** EAC honored this commitment by providing the readers of its report with

**Deleted:** It is incumbent upon us to provide them with the best and most complete data and research that we can.

**Deleted:** only

**Deleted:** readers with the

**Deleted:** entire

**Deleted:** created by the consultants

**Deleted:** With regard to the interviews of two of the personnel from the Department of Justice, EAC made clarifying edits.

**Deleted:** eir

**Deleted:** by the consultants

**Deleted:**

**Deleted:** Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public. ¶

¶  
For these reasons, t

030430

Juliet E. Hodgkins/EAC/GOV  
12/08/2006 04:38 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, jlayson@eac.gov  
bcc  
Subject Draft response to Tova Wang

Commissioners,

Jeannie and I have collaborated on the following draft response to Tova Wang's letter. Please let me know if you agree or have comments/edits.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 draft response to Tova Wang.doc

030431

December 8, 2006

Ms. Tova Wang  
(Address)  
(Address)

Dear Ms. Wang:

The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public.

In its December 2006 report on voting fraud and voter intimidation, EAC honored this commitment by providing the readers of its report with the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. It is incumbent upon us to provide them with the best and most complete data and research that we can. Rather than provide only the synopsis of these interviews, EAC provided the readers with the entire summaries created by the consultants so readers could reach their own conclusions about the substance of the interviews.

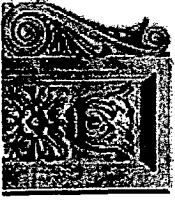
With regard to the interviews of two of the personnel from the Department of Justice, EAC made clarifying edits. Upon reviewing initial information about their interviews contained in the status report provided to the EAC Standards Board and EAC Board of Advisors and the information provided by the consultants at the working group meeting, those persons interviewed did not agree with certain characterizations of their statements contained in these materials. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public.

For these reasons, the report on voting fraud and voter intimidation will stand as adopted on December 7, 2006.

030432





**Bert A. Benavides/EAC/GOV**

11/29/2006 03:40 PM

To PDegregorio@eac.gov, Donetta L. Davidson/EAC/GOV,  
Gracia Hillman/EAC/GOV, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
cc Bryan Whitener/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV, Matthew Masterson/EAC/GOV@EAC,  
bbenavides@eac.gov, Elieen L. Collver/EAC/GOV@EAC

bcc

Subject Revised Final Agenda - Public Mtg 12-07

The Chairman has approved the revised final agenda. Additions are under "New Business."

Julie, you are allotted an estimated 10 minutes for the Fraud and Intimidation Report, including Q & A  
Tom, your portion is allotted an estimated 5 minutes for the Administrative Manual Adoption, including Q & A.  
Brian/Gavin, please note: you are collectively allotted 15 minutes for your portion, and an anticipated 20 min for your  
Q & A.

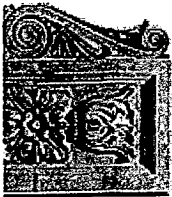
Thanks.



Public Meeting, 12-07-06, Wash., Revised Final Agenda.doc

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

**Bert A. Benavides/EAC/GOV**



**Bert A. Benavides/EAC/GOV**

11/29/2006 02:33 PM

To PDegregorio@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,  
Juliet E. Thompson-Hodgkins/EAC/GOV, Jeannie  
Layson/EAC/GOV  
cc Bryan Whitener/EAC/GOV@EAC, bbenavides@eac.gov,  
Matthew Masterson/EAC/GOV@EAC  
Subject Revised Final Agenda - Public Mtg 12-07

Mr. Chairman, per Tom, I understand you have added two additional items under "New Business." Please review the revised final agenda and let me know if it meets with your approval so that Bryan can make the necessary changes on our website, et al.

Thanks.

030433

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005



202-566-3114 Public Meeting, 12-07-06, Wash., Final Agenda.doc

030434



## U.S. Election Assistance Commission Public Meeting Agenda

1225 New York Avenue, NW  
Suite 150  
Washington, DC  
Thursday, December 7, 2006  
10:00 AM - 3:30 PM EST

**Call to Order** (Chairman DeGregorio)

**Pledge of Allegiance** (Chairman DeGregorio)

**Roll Call**

**Adoption of Agenda** (Chairman DeGregorio)

**Welcoming Remarks** (Chairman DeGregorio)

### **OLD BUSINESS:**

- **Correction and Approval of Minutes from the October 26, 2006 Meeting** (Chairman DeGregorio)
- **Report of the Executive Director** (Thomas Wilkey)

### **NEW BUSINESS:**

- **Election of Officers for 2007**
- **Adoption of Fraud and Intimidation Report** (Julie Thompson-Hodgkins)
- **Adoption of Administrative Manual - Policy and Procedures** (Thomas Wilkey)
- **Review and Adoption of EAC Certification Program** (Brian Hancock, Director, Voting Systems Certification, U. S. EAC and Gavin Gilmour, Deputy General Counsel, U. S. EAC)



## **Break**

- **Assessing the 2006 Election**

### **Panel 1: Election Officials**

- The Honorable Deborah Markowitz, President, National Association of State Secretaries and Vermont Secretary of State
- Kevin J. Kennedy, President, National Association of Election Directors, and Executive Director, Wisconsin State Elections Board
- R. Doug Lewis, Executive Director, Election Center
- Elizabeth "Libby" Ensley, IACREOT Director-At-Large, Election Officials Election Commissioner

**12:30 PM – 1:15 PM      Lunch**

### **Panel 2: Organizations and Academics**

- Mary G. Wilson, President, League of Women Voters of the United States
- Jonah Goldman, Director, National Campaign for Fair Elections, Lawyers' Committee on Civil Rights
- Mark (Thor) F. Hearne, II - Partner, Lathrop & Gage, L.C.
- Dan Seligson, Editor, electionline.org

### **Panel 3: Election Technology Representative**

- John S. Groh, Chair, Technology Electronics Council

**Commissioners' Closing Remarks**

**Adjournment**

Jeannie Layson /EAC/GOV  
12/11/2006 09:18 AM

To klynndyson@eac.gov  
cc dscott@eac.gov, bolu@eac.gov, ggilmour@eac.gov  
bcc  
Subject Brennan Center FOIA request

Karen,

I still do not have the RFPs we received for the voter fraud/ID project. I need that information ASAP. I this was a sole source contract and there were no other RFPs received, please indicate this in your reply. Please see language from original request below:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

030407

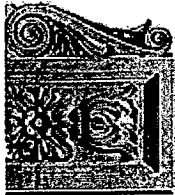


Bert A. Benavides/EAC/GOV  
12/08/2006 10:46 AM

To Jeannie Layson/EAC/GOV  
cc  
bcc  
Subject FOIA Request - Tova Wang

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

— Forwarded by Bert A. Benavides/EAC/GOV on 12/08/2006 10:44 AM —



Bert A. Benavides/EAC/GOV  
11/15/2006 02:19 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc bbenavides@eac.gov  
Subject RE: Conference call

Tova, due to the change in time, both Julie and Tom will be calling into the conference call from their respective residences. Thanks. Take care.

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>  
11/09/2006 04:54 PM

To bbenavides@eac.gov, [REDACTED]  
cc twilkey@eac.gov, jhodgkins@eac.gov  
Subject RE: Conference call

Sounds good. I will come by the EAC since its literally a few feet from my office. I look forward to seeing you. Tova

Tova Andrea Wang, Democracy Fellow  
**The Century Foundation**  
1333 H Street, NW, Washington, D.C. 20005

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

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**From:** bbenavides@eac.gov [mailto:bbenavides@eac.gov]  
**Sent:** Thursday, November 09, 2006 4:21 PM  
**To:** wang@tcf.org; serebrov@sbcglobal.net  
**Cc:** twilkey@eac.gov; jhodgkins@eac.gov; bbenavides@eac.gov  
**Subject:** Conference call

Tova, Job -- I have scheduled 6:00 PM EST on Wednesday, November 15 for a conference call with Tom Wilkey and Julie Thompson-Hodgkins.

Conference call in # is 866-222-9044, Passcode 63114#

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

030439



Bert A. Benavides/EAC/GOV  
12/08/2006 10:44 AM

To Jeannie Layson/EAC/GOV  
cc  
bcc  
Subject FOIA Request - Tova Wang

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

--- Forwarded by Bert A. Benavides/EAC/GOV on 12/08/2006 10:42 AM ----



Bert A. Benavides/EAC/GOV  
11/13/2006 08:45 AM

To "Job Serebrov"  
<serebrov@sbcglobal.net>@GSAEXTERNAL  
cc wang@tcf.org, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV  
Subject Re: Conference call

Job,

I have changed the time, per your request, of the conference call scheduled for Wednesday, November 15 to 6:30 PM EST.

Bert A. Benavides  
Special Assistant to the Executive Director  
202-566-3114  
"Job Serebrov" <serebrov@sbcglobal.net>



"Job Serebrov"  
<serebrov@sbcglobal.net>  
11/09/2006 06:33 PM

To bbenavides@eac.gov, wang@tcf.org  
cc  
Subject Re: Conference call

6:00 pm will not work for me as I am in route home. It would have to be between 6:30 and 7:00 pm your time. Remember I am one hour behind.

Job

--- bbenavides@eac.gov wrote:

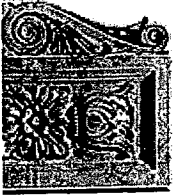
> Tova, Job -- I have scheduled 6:00 PM EST on  
> Wednesday, November 15 for a  
> conference call with Tom Wilkey and Julie  
> Thompson-Hodgkins.  
>

030440




> Conference call in # is 866-222-9044, Passcode  
> 63114#  
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>  
>  
> Bert A. Benavides  
> Special Assistant to the Executive Director  
> U. S. Elections Assistance Commission  
> 1225 New York Avenue, NW  
> Suite 1100  
> Washington, DC 20005  
> 202-566-3114

----- Forwarded by Bert A. Benavides/EAC/GOV on 12/08/2006 10:42 AM -----



**Bert A. Benavides/EAC/GOV**

11/15/2006 02:19 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc bbenavides@eac.gov  
Subject RE: Conference call 

Tova, due to the change in time, both Julie and Tom will be calling into the conference call from their respective residences. Thanks. Take care.

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114  
"Tova Wang" <wang@tcf.org>



**"Tova Wang"**  
<wang@tcf.org>

11/09/2006 04:54 PM

To bbenavides@eac.gov, serebrov@sbcglobal.net  
cc twilkey@eac.gov, jhodgkins@eac.gov  
Subject RE: Conference call

Sounds good. I will come by the EAC since its literally a few feet from my office. I look forward to seeing you. Tova

Tova Andrea Wang, Democracy Fellow  
**The Century Foundation**  
1333 H Street, NW, Washington, D.C. 20005

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

030441

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**From:** bbenavides@eac.gov [mailto:bbenavides@eac.gov]  
**Sent:** Thursday, November 09, 2006 4:21 PM  
**To:** wang@tcf.org; serebrov@sbcglobal.net  
**Cc:** twilkey@eac.gov; jhodgkins@eac.gov; bbenavides@eac.gov  
**Subject:** Conference call

Tova, Job – I have scheduled 6:00 PM EST on Wednesday, November 15 for a conference call with Tom Wilkey and Julie Thompson-Hodgkins.

Conference call in # is 866-222-9044, Passcode 63114#

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

030442

Jeannie Layson /EAC/GOV  
12/08/2006 10:21 AM

To twilkey@eac.gov, Bert A. Benavides/EAC/GOV@EAC  
cc  
bcc  
Subject Brennan Center FOIA request

Just reminding you guys that I need all of Tom's emails and/or correspondence regarding the FOIA request below. I need this info by the end of the day. We interpret that this request does not cover emails or correspondence among staff--only b/w Tom and the parties mentioned below. The best and most efficient way is to print everything and bring it to me. I will review all of the documents and determine what is applicable to this request, as well as redact any information not applicable.

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Jeannie Layson  
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www.eac.gov

030448




Gracia Hillman /EAC/GOV

12/04/2006 04:23 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc "Davidson, Donetta" <davidson@eac.gov>, jlayson@eac.gov, Paul DeGregorio/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: Revised summaries of interviews with Donsanto and Tanner 

Attached are my comments and suggested edits to this section. They should show up in green; at least that is the color on my screen.

I feel very strongly and therefore I recommend that EAC explain that it made clarifying edits to some of the text in the summaries of the DOJ interviews. The consultants provided us with lots of material and that is the only section we changed. If we don't offer a straightforward explanation, then I think we invite more problems and headaches. I offered suggested language in the attached.



DOJ Interviews.doc

030444

**Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice**  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

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*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating

| factor, making it more likely the department will take it over

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*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

| The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public.

Deleted: (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

| Cases

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Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

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If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

Comment [GH1]: ??conspiracies  
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Deleted: Charges were not brought against individuals – those cases went unprosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.  
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1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

**Interview with John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice**

Deleted: Director

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Deleted: Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.¶

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

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When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation



Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

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Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

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Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands

of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Consultants Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint in-take phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

EAC made clarifying edits to this portion of the consultants' report.

**Comment [GH2]:** The consultants did not say, "we contend," and I do not think EAC should put words in their mouth, so to speak.

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**Comment [GH3]:** I feel quite strongly that EAC needs to acknowledge that it edited this portion of the consultants' report because of all the materials they submitted and that we are attaching as appendices, this is the only section we are changing.

Juliet E. Hodgkins/EAC/GOV  
12/01/2006 03:23 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc jlayson@eac.gov

bcc

Subject Revised summaries of interviews with Donsanto and Tanner

Commissioners,

Per your request, please see attached the proposed edits to the summaries of the interviews with Craig Donsanto and John Tanner.

Please get me your comments by Monday COB so that we can finalize this document in time for the meeting next week.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

030451

**Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice**  
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence--factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

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*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

No. But if the question involves racial animus, that has also always been an aggravating

factor, making it more likely the department will take it over

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*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public.

Deleted: (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases

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Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

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If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

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1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*

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February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Deleted: Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.¶

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

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When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

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Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

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Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands



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It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

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#### Recommendations


Mr. Tanner did not feel it was appropriate to make recommendations.

Note: We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

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Jeannie Layson /EAC/GOV  
12/01/2006 12:41 PM


To: Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: FOIA request 

Thank you. This is for the Brennan Center, so I want to do everything possible to meet their deadline.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
12/01/2006 12:26 PM

To: Jeannie Layson/EAC/GOV@EAC  
cc  
Subject: Re: FOIA request 

Bert,  
Go into my computer and look under the folder for eagleton and print out any items there and fed ex them to me so I can look at them  
We also have some hard cover letters that were sent back and forth.  
My password is  


Let me know if you have a problem and Henry can reset the password

-----  
Sent from my BlackBerry Wireless Handheld

---

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

**From:** Jeannie Layson  
**Sent:** 12/01/2006 11:50 AM  
**To:** Thomas Wilkey  
**Cc:** Bert Benavides  
**Subject:** FOIA request

Tom,  
I know you haven't responded to my FOIA request b/c of what you've got going on, but I wanted to bring it to your attention b/c I'm pretty sure you've got some related emails. According to Karen, you and John Weingardt had email exchanges primarily after June 30. I'll need to get all of those and any letters or any other correspondence b/w the two of you. I asked for everyone to submit what they have by Monday. Perhaps Bert can begin gathering this info. See the original request below.

030458

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Please let me know if you would like a copy of the FOIA request.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030459

Jeannie Layson /EAC/GOV

11/28/2006 10:27 AM

To EAC Personnel

cc

bcc

Subject FOIA Request

Hello everyone,

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

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Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030460

Jeannie Layson /EAC/GOV  
11/15/2006 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft fraud and intimidation report 

Here's my suggestions...



Voter Fraud & Intimidation j edits.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030461

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in this country.

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**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

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EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding that had to first be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

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To accomplish these tasks, EAC employed two consultants, who worked with EAC staff and interns to conduct the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topic of voter fraud and voter intimidation; (2) to develop a uniform definition of voter fraud and voter intimidation; and (3) to propose recommended strategies for researching this subject.

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EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

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**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Robert Bauer**  
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Kathy Rogers**  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

**Barry Weinberg**  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

**Barbara Arnwine**  
Executive Director, Lawyers Committee for Civil Rights under Law  
Leader of Election Protection Coalition

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S. Department of Justice

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

**EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books.

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There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### Reports and Studies of Voter Fraud and Intimidation

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_”:

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#### Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.



- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.
- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, “Report to Congress on the Activities and Operations of the Public Integrity Section for 2002.”
- Public Integrity Section, Criminal Division, United States Department of Justice, “Report to Congress on the Activities and Operations of the Public Integrity Section for 2003.”
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- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
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- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
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- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection (is this DOJ?) program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate, because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that allege suppression of the vote.

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One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Pat Rogers**  
Attorney, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Lori Minnite**  
Barnard College, Columbia University

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Neil Bradley**  
ACLU Voting Rights Project

**Chandler Davidson**  
Rice University

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered and due to the stiff penalties associated with this type of fraud.

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Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

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Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states,

enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those who allege that prosecutions are not sufficiently aggressive and those who feel that the current laws are sufficient for prosecuting fraud and intimidation.

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A summary of the each of the interviews conducted is attached as Appendix “ \_\_\_ ”.

### Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

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Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem (WHY DID IT “SEEM” THIS WAY? IS THERE EVIDENCE?) that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “ \_\_\_ ”.

### Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

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### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

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To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

**The Definition of an Election Crime for Purposes of this Study**

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Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

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Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

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The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

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*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;

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- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

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***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

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***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;

- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

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### What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

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### RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

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#### *Recommendation 1: Conduct More Interviews*

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

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#### *Recommendation 2: Follow Up on Media Research*

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, many of the articles contained information about investigations into such activities or even charges brought. (THIS SENTENCE CONTRADICTS WHAT WAS SAID EARLIER ABOUT THE LACK OF MEDIA ARTICLES ON FOLLOW UP.) Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

#### *Recommendation 3: Follow Up on Allegations Found in Literature Review*

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

**Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline**

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

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Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

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**Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice**

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” (NOT SURE WHAT THIS MEANS) from Election Day.

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**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

**Recommendation 7: Attend Ballot Access and Voting Integrity Symposium**

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of

the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

**Recommendation 8: Conduct Statistical Research**

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- o Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- o Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

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EAC should also conduct a survey of elections officials, district attorneys, and district election officers. (WHAT WOULD WE SURVEY THEM ABOUT?) The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

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**Recommendation 9: Explore Improvements to Federal Law**

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

**Recommendation 10: Use Observers to Collect Data on Election Day**

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

**Recommendation 11: Study Absentee Ballot Fraud**

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

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**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” (WHAT DOES THIS MEAN?) and the impact of the fraud.

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***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons actually voted.

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***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

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***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a

comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

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In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### *Survey Chief Election Officers Regarding Administrative Complaints*

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official, and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

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#### *Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred*

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

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***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but

Deleted: and political pundits

DRAFT – DO NOT DISTRIBUTE

| also inform us of what factors impact the existence, prevention, and prosecution of election crimes.



**FOR IMMEDIATE RELEASE**

**CONTACT:** Drew Courtney or Josh Glasstetter

October 20, 2006

at 202-467-4999 / media@pfaw.org

## **PFAW Presses Election Assistance Commission to Release Report Debunking Myth of Voter “Fraud”**

Despite requests, the Election Assistance Commission is refusing to release a report written months ago that reportedly pokes holes in the widespread myth that voter fraud is rampant in America. EAC Chairman Paul S. DeGregorio Thursday denied a request by People For the American Way Foundation (PFAWF) to make the taxpayer-funded findings available to the public in time for the November elections, now less than three weeks away. PFAWF President Ralph G. Neas said the information should be released immediately and questions whether the report is being suppressed for political reasons.

The existence of the report was revealed days ago by *USA Today*, which reported that instances in which non-eligible persons attempt to pass themselves off as voters and somehow cast fraudulent votes are exceedingly rare. PFAWF’s sister advocacy organization, People For the American Way, has launched a petition drive asking the commissioners to release the report, since it will refute rampant allegations of voter fraud which have led to restrictive voting requirements.

“As we approach the elections, the last thing election officials need is to labor under the false impression that ineligible people are trying to pass themselves off as qualified voters at the polls. They should be focusing on ways to keep the path to the ballot box clear for as many eligible voters as possible, instead of looking for nonexistent fraud that will slow down the process and possibly even discourage eligible voters,” said PFAW President Ralph G. Neas. “We need to raise confidence in our elections process, not allow harmful myths to stand – especially when the government has findings available to refute them.”

Neas sent a letter on behalf of PFAW Foundation to the EAC earlier this week asking that the report be made available to the public, but on Thursday the EAC denied the request. The report was written by by Tova Wang, an elections scholar at the Century Foundation think tank, and Job Serebroy, an Arkansas attorney, and has been in the hands of the EAC commissioners for more

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than four months.

Neas said the report has critical implications for election legislation around the country. During the past few years, a number of states have passed legislation to combat supposed “voter fraud” through overly restrictive identification requirements and other impediments to the ballot box. According to USA Today, the report found such voter fraud to be exceedingly rare.

“We have plenty of problems to deal with. We’ve all seen long lines, unreliable voting equipment, purges that wrongly remove eligible voters from the roll. It turns out the problem is not that bad people are trying to vote, but that too many qualified voters are discouraged from voting. This report apparently confirms what common sense has told us for years – we need to make it easier for eligible voters to cast a vote that counts, not harder,” said Neas. “Instead of fighting nonexistent fraud, these restrictive new laws will discourage voters – people like senior citizens, students and disabled voters who may not have drivers’ licenses or other forms of ID required by these new laws. That’s just wrong, and is clearly not supported by the evidence.”

Neas said the new laws are often politically motivated. The misleadingly-named right-wing group the American Center for Voting Rights has supported extremely restrictive laws by pointing to supposed voting fraud.

“Any law that disadvantages certain groups of voters – like senior citizens and students – should be suspect. If the voters are disadvantaged, which political parties and candidates stand to gain? The same question should be asked about the reason the release of this report has been delayed. Is there a political motivation?” he asked. “Has this study been buried because anti-voter activists like the American Center for Voting Rights find its conclusions inconvenient? That’s unacceptable. The Commissioners of the EAC have had this report for months, even as they have testified before Congress on critical legislation that could have been informed by the report’s findings. It’s unconscionable.”

Laws passed in several states this year raise barriers to the ballot box that would prevent poor, elderly, and minority voters from casting a ballot. PFAW’s sister organization, People For the American Way Foundation, has challenged laws in Ohio, Missouri, and Arizona; in all three, the laws were either struck down or stayed until after the November election. Yet restrictions still in effect in a number of states could harm voters. One such provision, stringent ID requirement, has been likened to a modern day poll tax.

Said Neas, "All American citizens have a vested interest in having fair and open elections. This report contains valuable information that can help us do that. The EAC should release the report immediately, no matter what the political implications may be and hold public hearings to discuss the findings."

PFAW's petition can be found at [www.ReleaseTheReport.com](http://www.ReleaseTheReport.com).

**Laura Strickler, Producer**  
*CBS Evening News, Washington*  
Office: 202-457-1597  
Blackberry: 646-460-6175  
Fax: 202-457-1577  
Cell : 917-499-6459  
[stricklerl@cbsnews.com](mailto:stricklerl@cbsnews.com)

Margaret Sims/EAC/GOV  
10/13/2006 04:18 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov  
bcc

Subject Research Project Descriptions

Jeannie:

Here are the changes I suggested for the Vote Count-Recount and the Voting Fraud-Voter Intimidation research projects. I don't think they will help the current situation much, as the original VF-VI description already stated that it is preliminary research. As it is preliminary research, we did not expect that it would provide a total picture of voting fraud and voter intimidation in this country. We just wanted to get some sense of what is going on, and a better idea of the direction future EAC research on the subject should take. To ensure that the research would be balanced, we had consultants and project working group members from opposing sides of the political spectrum.

According to folks intimately familiar with the development of HAVA, disputes over the extent to which voting fraud and voter intimidation existed caused Congress to add the study of these subjects to EAC's list of research projects. Given the nature of the subject (most offenders try to hide their activities, sufficient evidence is hard come by with some types of activity, and prosecution of offenses may not occur for political or budgetary reasons), it is doubtful that we will ever have completely reliable statistics on occurrences of voting fraud and voter intimidation, but we may be able to obtain better statistics than anyone else has. And we should be able to identify where in the voting process most offenses tend to occur and to explore alternatives for addressing vulnerabilities that leave the process open to corruption.  
--- Peggy



Rev Descriptions for Web Site Descriptions of Vote Counts- Recounts and Voting Fraud Research 9-6-06.doc

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**Vote Counts and Recounts**

Section 241(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern recounts of ballots cast in elections for Federal office, contests of determinations regarding whether votes are counted in such elections, and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for Federal office. The law also authorizes EAC to identify best practices that are used by States for recounts and contests. Consequently, in FY 2005, EAC began conducting research to develop best practices on vote count and recount laws and procedures. A major tasks associated with this research is the review of literature for methodologies used to establish best practices and developing definitions of what constitutes a best practice with respect to vote counts, recounts, and election contests. Major tasks specifically associated with the vote count research include: (1) reviewing and analyzing data collected on definitions of what constitutes a vote for each state by voting system, including processes for handling and counting ballots, provisions for observing the count, types of accounting and auditing procedures used to ensure an accurate accounting of each ballot cast, and time periods provided between unofficial election night tallies and certification of official results; (2) drafting a comprehensive report that includes the data analysis and state-by-state summary of definitions of what constitutes a vote for each voting system and the laws and procedures used to tally ballots; and (3) identifying best practices related to vote counting. Major tasks specifically associated with recount and election contest research include: (1) reviewing and analyzing states' recount and contest laws and procedures; (2) drafting a comprehensive report that includes the data analysis and the State-by-State summary of recount and contest laws and procedures; and (3) identifying best practices with respect to recounts and election contests. After conducting the research, EAC will provide election officials throughout the country with recommended best practices for vote counts recounts, and contested elections; however, jurisdictions may not be permitted to implement these practices until their State election authority or their State legislature has determined which are appropriate to implement in the State.

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Deleted: Section 241 enumerates a number of periodic studies of election administration issues that the EAC may elect to conduct. "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)."

Deleted: list the following election administration issues:

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**Voting Fraud and Voter Intimidation**

Sections 241(b)(6) and (7) allow EAC to conduct and make available to the public studies regarding nationwide statistics and methods of identifying, deterring, and investigating voting fraud in election for Federal office; and identifying, deterring, and investigating methods of voter intimidation. Building on this reference to studies of voting fraud and voting intimidation, EAC is conducting preliminary research on these issues. Activities include: (1) identifying what constitutes voting fraud and voter intimidation affecting Federal elections; (2) performing background research, including Federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identifying and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) writing a report summarizing the key findings, including suggestions for specific EAC activities to address these topics.



"Wolf, Richard"  
<rwolf@usatoday.com>  
10/12/2006 11:53 AM

To jlayson@eac.gov  
cc  
bcc

Subject RE: and the drama continues...

Jeannie,

I can't help what the bloggers do. And I didn't say this was some sort of cover-up by the EAC. Several people had mentioned the fraud study to me and said nothing was ever issued. I asked the chairman about that, and he told me what could be given to me was whatever had been discussed at the May meeting, nothing more. I asked for that, and you guys provided it. But it wasn't distributed publicly, right?

The bottom line from our point of view was that two consultants, from different political perspectives, had reached an interesting conclusion about fraud. We understand it isn't final, and we understand the EAC hasn't put its imprimatur on it. But we still found it newsworthy. I'm sorry if the story has been wrongly interpreted by some. It certainly was not my intention.

---

**From:** jlayson@eac.gov [mailto:jlayson@eac.gov]  
**Sent:** Thursday, October 12, 2006 10:48 AM  
**To:** Wolf, Richard  
**Subject:** and the drama continues...

Rich,

I don't mean to beat a dead horse, but your article has really left the wrong impression. Go [here](#) and [here](#). Our [federal register notice](#) clearly stated that an update on our research activities was part of the agenda. And the document you have is just an update for the project, not a final or even a draft report. It's even called a STATUS report -- there is a difference b/w a preliminary report and an update. All of this was discussed at a meeting that was open to the public, but that was not mentioned in your article.

Nothing we can do now, but I really feel we got some unfair treatment here.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030486

Bryan Whitener /EAC/GOV  
10/11/2006 05:29 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
bcc  
Subject AP voter fraud story posted

**Report: Voter fraud may be overstated**

By WILL LESTER  
Associated Press Writer  
Oct 11, 4:40 PM EDT  
October 11, 2006

WASHINGTON (AP) – The most common form of voter fraud involves absentee ballots, including forgery and coercion in getting older or ailing voters to fill them out, according to a preliminary report to the U.S. Election Assistance Commission.

But the report, delivered in May, suggested that reports of polling place fraud involving "dead" voters and voting by felons and non-citizens might be overstated. The researchers said there is far more anecdotal evidence about voter fraud than specific verifiable claims.

"On balance, more researchers find it to be less of a problem than is commonly described in political debate," the report said.

"Many times people put their own partisan spin on voter fraud and voter intimidation," EAC Chairman Paul DeGregorio said Wednesday.

DeGregorio said the report was only preliminary and cautioned that more investigation is needed to understand the amount of voter fraud in this country.

"Many times you see people attempting to commit fraud, but it never gets to the level of being reported," said DeGregorio, a former elections official in St. Louis. He noted a case of more than 1,400 suspect voter registration cards being investigated in St. Louis.

The preliminary report was prepared by Tova Wang, an elections expert at the Century Foundation think tank and Job Serebrov, an Arkansas attorney.

Conservatives have argued the problem of voter fraud is severe in some states, while liberals generally argue that voters face too many restrictions.

New state laws requiring voters to present identification at polling places have faced legal challenges in states such as Arizona and Georgia.

"It's absolutely a serious problem," said Thor Hearne, counsel to the American Center for Voting Rights. "It's an unfortunate reality, particularly in battleground states."

Those problems include voter fraud and voter intimidation, he said.

The final voter fraud report is expected after the Nov. 7 midterm elections, DeGregorio said.

###

030487

Margaret Sims/EAC/GOV  
10/11/2006 02:37 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
bcc  
Subject Re: Voting Fraud-Voter Intimidation Report

The answer is tricky. The working group met *after the written report was submitted* for the board meetings, but *before the status report was formally presented* (orally) at the board meetings. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
10/11/2006 02:27 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Voting Fraud-Voter Intimidation Report

So the answer is yes, they did meet after the status report was presented?

Jeannie Layson  
U.S. Election Assistance Commission  
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Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
10/11/2006 02:26 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
Subject Re: Voting Fraud-Voter Intimidation Report

The status report was written on May 17, 2006 (the last day it could be submitted for the upcoming board meetings). The first and only meeting of the working group was May 18, 2006. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
10/11/2006 02:06 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Voting Fraud-Voter Intimidation Report

030488



Yes, that is what prompted my question. So the answer is no -- they have not met since May 17?

Jeannie Layson  
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Phone: 202-566-3100  
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030489

Jeannie Layson /EAC/GOV  
10/11/2006 02:21 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Voting Fraud-Voter Intimidation Report

I agree. I've pointed out that mistake to the reporter, but the damage is done. And since we included a lot of status reports in the materials submitted to both adv. boards, we can anticipate having to do this over and over again. All of that info is public information.

Jeannie Layson  
U.S. Election Assistance Commission  
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Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
10/11/2006 01:45 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
Subject Re: Voting Fraud-Voter Intimidation Report

I would hope that we can refer to it as a status report on the research project (prepared by EAC staff based upon information available at the time from our consultants, Tova and Job). Calling it a preliminary report has given rise to some confusion. That confusion has led to complaints from project working group members and requests from outsiders, who mistakenly think that EAC has released the document written by our consultant that fully reports on the preliminary research into voting fraud and voter intimidation and makes recommendations for future EAC action. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
10/11/2006 12:33 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Voting Fraud-Voter Intimidation Report

Thanks for the update. Per legal, the preliminary report is absolutely public information which is why we had to give it to the reporter when he asked for it.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005


030490

Phone: 202-566-3100  
www.eac.gov

030491

**Jeannie Layson /EAC/GOV**  
10/11/2006 02:06 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc

Subject Re: Voting Fraud-Voter Intimidation Report 

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030492

Margaret Sims /EAC/GOV  
10/11/2006 01:57 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
bcc

Subject Re: Voting Fraud-Voter Intimidation Report

History: This message has been replied to.

The working group met prior to the meeting of the EAC boards, but too late for its deliberations to be summarized in the written status report on the project that was delivered to the boards. The status report notes that a meeting of the working group was about to be held to review the research so far and make recommendations. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
10/11/2006 01:03 PM

To Margaret Sims/EAC/GOV@EAC  
cc

Subject Re: Voting Fraud-Voter Intimidation Report

Has the working group met since the preliminary report was given to the Standards Bd?

-----  
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----

**From:** Margaret Sims  
**Sent:** 10/11/2006 12:34 PM  
**To:** Paul DeGregorio; Jeannie Layson; Thomas Wilkey  
**Cc:** Amie Sherrill; Juliet Hodgkins; Bryan Whitener; Tamar Nedzar  
**Subject:** Re: Voting Fraud-Voter Intimidation Report

Just a note to clarify that we are not releasing the preliminary report on voting fraud and voter intimidation (Tova & Job's report) because the draft report is going through EAC review. The only document we can offer at this time is the status report on the research project, which was delivered to our boards and which apparently is considered public information. The status report does not address any recommendations for future EAC action.

I am using some of my work at home time on the draft report. Hopefully, I can meet with Julie and Tamar next week. After that, we will have a better idea of when it will be ready for a Commissioner briefing. --- Peggy

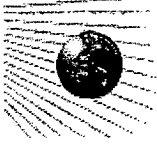
Paul DeGregorio/EAC/GOV

Paul DeGregorio /EAC/GOV  
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret



030493



Sims/EAC/GOV@EAC  
Subject Re: Interview Request

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 10/11/2006 10:15 AM  
**To:** Paul DeGregorio  
**Cc:** Amie Sherrill; Margaret Sims  
**Subject:** Interview Request

Mr. Chairman,

Will Lester of the Associated Press wants to interview you briefly via phone about the preliminary fraud report. I recommend you accomodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election lanscape. He has requested a copy of the preliminary report, which I am sending to him. He only needs a few minutes, and as we discussed, i think the message is that these are preliminary findings that we presented to our advisory boards to get their input. When the final report is complete, we will release it. You can also use some of the talking pts from your speech, such as the challenge related to the very definition of the term "fraud," as people define it differently. How about I set it up for noon?

The only question he asked that I don't know the answer to is when we expect the final report. Peg... please weigh in on this.

Jeannie Layson  
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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030494

Margaret Sims /EAC/GOV  
10/11/2006 12:34 PM

To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC  
bcc

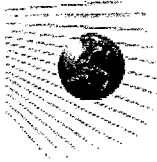
Subject Re: Voting Fraud-Voter Intimidation Report

History: This message has been replied to.

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Peggy

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
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030495

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[www.eac.gov](http://www.eac.gov)

030498



Margaret Sims /EAC/GOV  
10/11/2006 12:31 PM

To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, bwhitener@eac.gov  
bcc

Subject Re: Voting Fraud-Voter Intimidation Report

History This message has been replied to.

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Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
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030497

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The only question he asked that I don't know the answer to is when we expect the final report. Peg... please weigh in on this.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030498



Paul DeGregorio /EAC/GOV

10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC

cc Amie J. Sherrill/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC

bcc

Subject Re: Interview Request

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson

**Sent:** 10/11/2006 10:15 AM

**To:** Paul DeGregorio

**Cc:** Amie Sherrill; Margaret Sims

**Subject:** Interview Request

Mr. Chairman,

Will Lester of the Associated Press wants to interview you briefly via phone about the preliminary fraud report. I recommend you accomodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election lanscape. He has requested a copy of the preliminary report, which I am sending to him. He only needs a few minutes, and as we discussed, i think the message is that these are preliminary findings that we presented to our advisory boards to get their input. When the final report is complete, we will release it. You can also use some of the talking pts from your speech, such as the challenge related to the very definition of the term "fraud," as people define it differently. How about I set it up for noon?

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030499

Jeannie Layson /EAC/GOV

10/11/2006 10:17 AM

To Bryan Whitener/EAC/GOV@EAC

cc

bcc

Subject Re: Fw: draft text for USA Today

Why are you sending me all of this stuff?

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV

10/11/2006 10:16 AM

To Jeannie Layson/EAC/GOV@EAC

cc

Subject Fw: draft text for USA Today

----- Forwarded by Bryan Whitener/EAC/GOV on 10/11/2006 10:17 AM -----

Gracia Hillman /EAC/GOV

09/27/2006 08:54 PM



To Bryan Whitener/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC

cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

Subject Re: draft text for USA Today

Sorry for delayed response. It is fine with me.

-----  
Sent from my BlackBerry Wireless Handheld

Bryan Whitener

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

**From:** Bryan Whitener

**Sent:** 09/27/2006 04:39 PM

**To:** Paul DeGregorio; Donetta Davidson; Gracia Hillman

**Cc:** Juliet Hodgkins; Thomas Wilkey

**Subject:** draft text for USA Today

Commissioners,

As you requested, I provided Tom and Julie a draft response to USA Today to accompany the docs requested by Richard Wolf. Julie revised it as follows and Tom agrees. Please let me know ASAP if you concur.

030500

Rich,

As we discussed, here are the docs you asked about that were presented at the board meetings in May and links to the meeting agenda. There are two reports: (1) a draft report produced by Eagleton Institute concerning provisional voting; and (2) a status report produced by EAC contractors regarding research being conducted on voter fraud and intimidation. The reports were presented by the contractors to the Standards Board and Board of Advisors for their input. This type of input is required for any guidance issued by EAC and is desired for any product that we provide to the election community and the public. Based on the input that was received from these boards, particularly regarding the questionable information contained in Eagleton's provisional voting report, EAC has not issued the Eagleton draft report as a final EAC document. As for the voter fraud and intimidation status report, it is merely an update on the status of the research conducted by the EAC contractors. A report and recommendations on future actions regarding this topic will be produced after EAC review of the preliminary research.

###

Jeannie Layson /EAC/GOV  
10/11/2006 10:15 AM

To pdegregorio@eac.gov  
cc asherrill@eac.gov, psims@eac.gov  
bcc  
Subject Interview Request

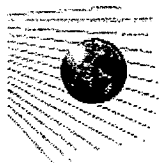
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[www.eac.gov](http://www.eac.gov)

030502



Paul DeGregorio /EAC/GOV  
09/28/2006 11:29 PM

To Juliet E. Thompson/EAC/GOV, Jeannie Layson/EAC/GOV  
cc  
bcc  
Subject latest version

The version of my speech I sent earlier was not the latest one. The correct one is attached. Sorry.



Speech on Fraud intimidation Sept 29 06 Salt Lake City.doc  
Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

030503

**Remarks by Paul DeGregorio  
Chairman, US Election Assistance Commission  
Voter Fraud/Intimidation Conference – Salt Lake City, Utah  
Center for Public Policy & Administration  
September 29, 2006**

Good afternoon, ladies and gentlemen. My name is Paul DeGregorio and I am the Chairman of the U.S. Election Assistance Commission. I would like to extend my thanks to Michael Alvarez, Thad Hall and Susan Hyde for organizing this conference and for inviting me to speak with you this afternoon.

My remarks today will focus on Voter Fraud and Voter Intimidation and how HAVA and the EAC address these issues.

The subject of voter fraud and voter intimidation can be a highly contentious issue. Since the 2004 election there has been a lot of discourse and writing about what constitutes election fraud and voter intimidation and how prevalent each may be in our society. While there are no clear numbers on the incidents of voter fraud and voter intimidation, what is clear is that the many groups are concerned about both issues and it is imperative that we continue to study and address them.

As you know, the EAC was created by The Help America Vote Act or "HAVA". HAVA represents the first major piece of federal legislation on national election reforms. Among other provisions, Section 241 of HAVA requires the EAC to conduct research on election administration issues. Among the tasks the EAC is to execute is the development of nationwide statistics and



methods of identifying, deterring, and investigating voting fraud and voter intimidation in elections for Federal office.

In September of 2005 the Commission hired consultants to begin a study of voting fraud and voter intimidation. This research project is charged with the development of a clear definition of what constitutes voting fraud and voter intimidation in Federal elections; identifying current activities of key government agencies, civic advocacy groups, and other organizations regarding these topics; the establishment of a working group of experts to discuss these issues; and production of a report to the EAC summarizing the findings that includes recommendations for future research if any. Our staff is reviewing the report that was submitted to the EAC last month and we expect to share our findings in the near future.

The lack of any solid statistics regarding voter fraud and intimidation can be attributed to two major factors. First is because there is wide disagreement about the definitions for the terms "fraud" and "intimidation." Some only consider it fraud if it falls under the criminal definitions of fraud. While others consider any form of an ineligible voter attempting to vote as fraud. I have even had it suggested to me that election officials who allow voters to cast ballots on touch screen machines without a voter-verified paper trail is election fraud. If that's the case, then we have a whole lot of fraud occurring out there.

The term intimidation is also wrought with ambiguity. Some only consider it intimidation if there is a physical or mental advantage of one party over the other, while others consider any difficulty in

the voting process as being intimidation. Because of these definitional differences there has been no clear way to study the amount of fraud or intimidation because everyone is using a different definition to help shape the statistics.

Also skewing the statistics about election fraud and voter intimidation is the political agenda or bias from both sides that accompanies much of the literature about the topic. Oftentimes we see fiery rhetoric on this issue that appears to me to want to “scare” people into voting or not voting. As a result of this political bias and the ambiguity that accompanies the terms “fraud” and “intimidation,” it is difficult to know when something has risen to the level to be considered fraud or simply is an accusation with no backing.

HAVA has several provisions that not only help to combat fraud but also make voting easier. Most notably section 303 of HAVA which requires each state to create “... a single, uniform, official, centralized, interactive, computerized statewide voter registration list...” This database is to be maintained at the state level and is to contain the name and registration information of every legally registered voter in the State.

The Statewide voter registration database is to serve as the single system for storing and managing the official list of registered voters throughout the state. It will be coordinated with other agencies databases within the state in order to insure the residence status of the voter.

The Statewide Voter Database serves a very important and specific function. It helps to prevent opportunities for fraud by allowing state election officials to check their registration information against the databases of other agencies in order to insure the status of the voters. Under HAVA, state election officials are given the right to remove those names that have been checked against state agency death records. Used correctly and efficiently, this would clearly help eliminate the problem of the use of a deceased person's name to vote or allow authorities to go after those who sign a dead person's name in the initiative or candidate petition process.

Also in section 303 of HAVA, State election officials are required to regularly update the registration list, removing only those individuals who are ineligible to vote in that election while updating the status of those eligible to vote. It is in this way that HAVA is helping to eliminate opportunities for fraud by eliminating ineligible voters from registration lists, while easing the process for those voters who are eligible.

One issue that has become particularly contentious is the issue of voter identification to combat voter fraud. As many of you know voter identification laws have lead to suits in Georgia, Indiana, Missouri, Ohio and Arizona with more to follow as states pass more identification laws.

In 2005-2006 the EAC commissioned research on voter identification practices in the 2004 election. To the surprise of no one the study found a lot of disagreement regarding the need for

voter identification laws and the way these laws should be applied.

Those in favor of voter identification laws argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. They propose stricter voter identification requirements to prevent one form of voter fraud -- that being multiple voting or voting by those who are not eligible.

However, opponents argue that stricter ID laws interfere with legitimate voter's access to the ballot. They fear that some voters may lack convenient access to the required ID documents. Both sides assert that their policy will engender faith in the electoral process among citizens.

At the heart of this entire debate is the balance that needs to be struck between allowing those who are eligible to vote the ability to vote while preventing those who are not eligible to vote from voting.

From my own personal experience in traveling the world to improve the election process, especially in emerging democracies in Eastern Europe, Africa and Asia, I witnessed little, if any, resistance to ID requirements, including photo ID requirements. Indeed, I believe the Carter-Baker Commission has cited this phenomenon in their recommendations on this issue. In the recent Presidential election in Haiti, which is the poorest country in the Western Hemisphere, voters were required to show a photo ID to cast ballots. Statistics provided by IFES showed that over 3 million Haitian citizens, or about 80% of the voting age population,

registered to vote at centers that took their picture and fingerprints, and that produced the ID they used on Election Day. These IDs were paid for by the Organization of American States. On Election Day, 60% of the registered Haitians went to the polls, used their IDs, and cast ballots in the presidential election. By the way the 60% turnout matched the 2004 turnout in the US presidential election.

I cite this example and the Carter-Baker study to suggest that the first step that should be taken in order to find this balance is that more research needs to be conducted on the issue of voter identification. As was noted by the EAC's research, the amount of evidence available on how voter identification laws impacted both voter turnout and voter fraud is limited, at best. As more and more states implement these laws more information needs to be gathered in order to discover if these laws are preventing fraud, and what their impact is on voter turnout.

Courts have also greatly disagreed on the impact of voter identification laws. A recent decision in Georgia granted a preliminary injunction to enjoin the State of Georgia from requiring photo identification to be able to cast a ballot in person. The court in reaching its decision concluded that the injury to a voter who couldn't get the proper identification in time to vote was great and could not be tolerated. The court did point out that a State has a legitimate and important interest in attempting to combat voter fraud and in turn ensure the integrity of its elections.

This case is a perfect example of the struggle that legislatures, election officials, and courts are having with the issue of voter

fraud and voter identification. Most, if not all, recognize voter fraud as something that compromises the integrity of elections, but to what level are we willing to burden the legitimate voter to prevent this fraud from occurring?

Voter intimidation also has little valuable statistical information available. Again this is because “voter intimidation” is difficult to define and has rarely been prosecuted.

Many of the accusations of voter intimidation are brought against poll workers, most of whom are unaware of the possible intimidation taking place. For instance many of the accusations of intimidation by poll workers stem from poll workers making improper demands for identification, or poll workers questioning voters in what is a manner perceived as aggressive or intimidating. The solution to this problem is simple, proper poll worker training. Through proper training poll workers will know when and how ID or other verification documents are to be presented and the proper way to question voters at the polls. Also revisions to challenger laws can bring about more clarity about appropriate challenges and therefore less accusations of voter intimidation.

As more statistics are kept and the form and frequency of voter intimidation is better understood, states will be better prepared to prevent instances of voter intimidation and further improve the integrity of their elections. The EAC will continue work in this area so that we can hopefully see less rhetoric and more voter participation and trust in our elections.

Since I will be leaving the EAC in the not-too-distant future, I would like to take a few minutes to discuss the immense accomplishments of the EAC since I became a commissioner in December of 2003:

First, we distributed the 3 billion dollars that Congress appropriated to the states to improve their voting equipment and processes. This was truly an historic event in the field of American election administration.

Also, the EAC delivered the HAVA-mandated voluntary voting system guidelines (VMSG) within proscribed the 9-month deadline. As we develop future versions of the guidelines, we will be looking into the use of new technology and devices, as well as new software that is being created for current voting systems. Next Monday we will publish in the Federal Register the draft of our new Voting System Certification Program that we expect to finalize in December. I think you will find that this program will be a lot more rigorous and transparent than anything we have ever seen before. I encourage you to review it and give us your comments.

During the past 33 months we have issued guidance to states on statewide databases, accessibility requirements and how to use HAVA funds. And our new Inspector General and his staff are working vigorously to audit and account for the funds we distributed. On a daily basis we answer questions and offer guidance for election officials throughout the USA and indeed from all over the world.

In order to further support local election officials in this crucial election year we have released quick start guides on new voting systems, voting system security and testing, and poll worker recruitment and training. These guides provide a snapshot of processes and procedures for local election administrators to use when implementing new voting systems and security and testing older ones. It includes tips on receiving and testing equipment, poll worker training, security issues, and Election Day operations. In 2007, as part of our Clearinghouse responsibilities, we plan to distribute more comprehensive and detailed guides on these same important subjects.

In addition to the research projects that we have begun regarding election fraud and intimidation, we have several other research and data collection projects underway that will provide election officials and the public with valuable data to be used to improve the integrity of our elections. Already underway are studies on a number of topics including effective designs for ballots, polling places and websites; best practices for poll worker training, recruitment and retention, a study on vote count and recount procedures and the 2006 Election Day survey.

The HAVA College Poll Worker Program has awarded a total of almost \$1 Million in grants to help recruit a new generation of poll workers. Research is underway to find the best methods to recruit train and retain college poll workers.

We are also working hard to make sure the public is kept up to date on the future of elections and how it will affect the voting process. During tenure as Chairman we have held six public



meetings throughout the country. The topics that we have covered in these meetings include: How voting systems are certified, The National Voter Registration Act, Vote Count and Recount Procedures, Poll Workers, Effective management guidelines for voting systems, effective ballot and polling place designs, better ways to serve military and other overseas voters, voter information websites, and the EAC voting system certification program. As you can see, with a staff of just 23 people--and that number includes the Commissioners--we have accomplished a great deal in our short period of existence.

Twenty one years ago, I was probably the only one in this room who was heavily engaged as a professional election administrator. I have seen a lot of change since that time and no more so than in the past 5 years. Since the passage of HAVA, the nation has experienced significant changes in the electoral process. New voting systems have been purchased, replacing the antiquated systems that had been in place for decades. New statewide databases are in place. No one should be turned away at the polls anymore as provisional voting is the law of the land. Disabled voters, elderly voters and voter with language barriers have new tools that make it easier for them to cast their ballot.

Is America better off for all this change? You bet we are.  
Is the system perfect and free from errors, flaws, fraud and intimidation? Certainly not.

On November 7<sup>th</sup>, can voters have full trust and confidence in the election results that come out of all of these new devices, laws and procedures? In my view, they certainly can.

It's been an honor for me to have served at this historic time on this small but remarkable federal agency that touches the lives of every American. During my time on the commission, I have come to know many of you and of your deep conviction to help American improve and strengthen our system of democracy. And I want to thank you for your work and for the strong support you have given me and the commission since our start a mere 3 years ago.

You may know that during the 10 years preceding my appointment to the EAC, I worked as hard as I could to improve the election process in many emerging democracies throughout the globe. Whether it was in Congo or Cambodia, Russia or Romania, Slovakia or Sierra Leone, those 10 years were truly a wonderful opportunity that allowed me to touch the hearts and minds of many peoples, and experience firsthand the many similarities and few differences we actually have among each other in this world. I will be forever grateful to President George W. Bush for giving me the opportunity to do and experience the exact same thing in the United States of America while on the EAC. Thank you.




Paul DeGregorio /EAC/GOV

09/28/2006 11:53 AM

To: Jeannie Layson/EAC/GOV@EAC

cc

bcc

Subject: Re: FYI 

I am leaving shortly to fly to Salt Lake City to give a speech tomorrow to a conference on vote fraud and intimidation sponsored by Thad Hall. It should be on the calendar that Bryan provides. I am also giving a speech next Thursday at a conference on voter ID and registration at MIT in Boston. Ron Rivest is the host.

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Chairman  
US Election Assistance Commission  
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202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

09/28/2006 11:35 AM

To: Paul DeGregorio/EAC/GOV@EAC

cc

Subject: Re: FYI 

Thanks for the intel. I often refer reporters to her to get the real world perspective. I'll let you know when I hear back from Hardball. Are you in St. Louis tomorrow?

-----  
Sent from my BlackBerry Wireless Handheld

Paul DeGregorio

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

**From:** Paul DeGregorio  
**Sent:** 09/28/2006 11:32 AM  
**To:** Jeannie Layson  
**Subject:** FYI

Jeannie,

I sat next to SoS Markowitz at today's hearing and peered down at her schedule for yesterday and today. She did interviews with the Wall Street Journal, NBC/CNBC and CNN while in DC yesterday and today. Apparently her staff had set up these interviews so that she could talk to the media about issues relating to voting systems and the upcoming election.

030515

Paul DeGregorio  
Chairman  
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www.eac.gov

Bryan Whitener /EAC/GOV  
09/27/2006 01:47 PM

To Margaret Sims/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
cc Jeannie Layson/EAC/GOV@EAC

bcc

Subject Response to USA Today request

All,

Richard Wolf of USA Today called again today. I told him I would send him the documents made public at the advisory board meeting in May. I'm sending the following items from the notebook given to board members: Tab 11 on Provisional Voting and Tab 13 on Voter Fraud.

Bryan

— Forwarded by Bryan Whitener/EAC/GOV on 09/27/2006 01:43 PM —

Bryan Whitener /EAC/GOV  
09/22/2006 05:10 PM

To Margaret Sims/EAC/GOV, Karen Lynn-Dyson/EAC/GOV,  
Thomas R. Wilkey/EAC/GOV, Juliet E. Hodgkins/EAC/GOV,  
Gavin S. Gilmour/EAC/GOV  
cc Jeannie Layson/EAC/GOV@EAC

Subject Media request - USA Today

All

Richard Wolf of USA Today called and asked for the following. Jeannie and I ask that you consider this carefully and let us know ASAP what to provide .

(1) The status report on voter fraud and consultant update that was presented to the advisory boards in May, 2006.

(2) The status of the required guidance document on provisional voting and voter ID that is referenced in the following passage in today's Electionline Weekly by Doug Chapin.

In addition to the EAC's considerable election management responsibilities (especially in the area of voting equipment certification and testing), the agency has key policy issues to resolve in the immediate to near-term future, including a required guidance document on provisional voting and voter ID (now nearly two years overdue) and continued regulatory oversight over state implementation of "motor voter". This latter issue will almost certainly involve questions about the intersection of state and federal laws on voter registration - questions which divided the Commission when applied to Arizona, and could divide it again as Republicans and Democrats continue their traditional struggle to balance access to the franchise with concerns about the potential for fraud at the polls.

Thanks,  
Bryan

030517

Jeannie Layson /EAC/GOV  
09/22/2006 06:07 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC  
cc Bryan Whitener/EAC/GOV@EAC, "Jeannie Layson"  
<jlayson@eac.gov>, Juliet E. Hodgkins/EAC/GOV@EAC,  
Margaret Sims/EAC/GOV@EAC  
bcc

Subject Re: Media request - USA Today

Regardless of the status, whatever we gave to the Standards Bd in that notebook is public record.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 09/22/2006 06:05 PM  
**To:** Karen Lynn-Dyson; Gavin Gilmour  
**Cc:** Bryan Whitener; Jeannie Layson; Juliet Hodgkins; Margaret Sims  
**Subject:** Re: Media request - USA Today

I believe we are waiting for the Commissioners to agree on where we go from here.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson  
----- Original Message -----

**From:** Karen Lynn-Dyson  
**Sent:** 09/22/2006 06:03 PM  
**To:** Gavin Gilmour  
**Cc:** Bryan Whitener; Jeannie Layson; Juliet Hodgkins; Margaret Sims;  
Thomas Wilkey  
**Subject:** Re: Media request - USA Today

Indeed, my understanding is the same as Gavin's (re: creating or providing guidance).

At this point, I am awaiting instruction from Tom as to how, if at all, he wishes to proceed with creating some type of EAC report out of the research which was provided to the EAC on the topics of voter identification and provisional voting.

K

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV  
09/22/2006 05:18 PM

To Bryan Whitener/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC,  
Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.

030518

Hodgkins/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC  
Subject Re: Media request - USA Today

I do not have any knowledge with regard to the status of the Above, however, I would note (with respect to the provisional voting issue) the study that karen is marshaling was not expected to create the "required". "Guidance" reference below. This requires publication, comment, etc (like the VVSG). Karen can correct me if I am wrong.

-----  
Sent from my BlackBerry Wireless Handheld  
Bryan Whitener  
----- Original Message -----

**From:** Bryan Whitener  
**Sent:** 09/22/2006 05:10 PM  
**To:** Margaret Sims; Karen Lynn-Dyson; Thomas Wilkey; Juliet Hodgkins; Gavin Gilmour  
**Cc:** Jeannie Layson  
**Subject:** Media request - USA Today

All

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Thanks,  
Bryan

030519

Bryan Whitener /EAC/GOV  
09/22/2006 05:10 PM

To Margaret Sims/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
cc Jeannie Layson/EAC/GOV@EAC

bcc

Subject Media request - USA Today

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Thanks,  
Bryan

030520



Jeannie Layson /EAC/GOV  
06/27/2006 04:36 PM

To smichels@usnews.com  
cc  
bcc  
Subject your inquiry

Mr. Michels,  
Responses to your questions are below. Please call me directly if I can be of further assistance.  
202-566-3103.

*1. When will EAC receive the preliminary report on voter intimidation and voting fraud?*

We anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week. This transcript will provide the comments made during the Working Group meeting.

*2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?*

First, Commissioners and EAC staff will review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with the Help America Vote Act (HAVA) §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

*3. When will we make this research available to the public? What form will it be in?*

The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.

As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

Please note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with HAVA §241, which requires EAC to conduct research on election administration issues, including the development of:


- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

030521

Margaret Sims/EAC/GOV  
06/27/2006 04:05 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: US News & World Report inquiry 

History:  This message has been replied to

Jeannie:

Here are my responses:

*1. When will EAC receive the preliminary report on voter intimidation and voting fraud?*

I anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week.

*2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?*

First, Commissioners and Commission staff will have to review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with HAVA §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

*3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)*

The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.

As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

If the reporter has spoken to Secretary Rokita, who maintains that EAC has no authority to conduct this research, you may want to note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with the Help America Vote Act, (HAVA) §241, which requires EAC to conduct research on election administration issues, including the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Peggy Sims  
Election Research Specialist  
U.S. Election Assistance Commission

Jeannie Layson/EAC/GOV

030522

Jeannie Layson/EAC/GOV  
06/27/2006 02:26 PM

To psims@eac.gov, twilkey@eac.gov  
cc  
Subject US News & World Report inquiry

Please provide answers to the following questions, posed to me by US News & World Report's Scott Michels. I need this info by the end of the day to meet his deadline.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030523

Margaret Sims/EAC/GOV  
06/27/2006 12:12 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject U.S. News & World Report

History:  This message has been replied to

Jeannie

We suspect that someone from the Voting Fraud-Voter Intimidation Project Working Group has been talking to reporters, tipping them off about what we are finding in our preliminary study, and referring them to our consultants (although the information could have come from anyone on the EAC boards, too). Apparently, the U.S. News & World Report reporter who contacted me also contacted both consultants working on the project.

Based on my recommendation, Tova Wang and, possibly, Job Serebrov, who are on EAC personal services contracts for our voting fraud and voter intimidation research, will seek further clarification from you about what they can and cannot say to reporters and in public fora about vote fraud and voter intimidation and about EAC's research. I have previously advised Tova and Job not to discuss the work they are doing for us as this is EAC research, the Commissioners have not yet received and accepted the final report, and the Commission has not approved their speaking about the EAC research.

Tova plans to call you tomorrow (Tuesday, June 27) about the issue. In addition to the reporter's inquiry, she has been invited to speak on the subject at the summer conference of the National Association of State Legislatures. She has plenty of knowledge of the subject in her own right (apart from our study), but is having trouble differentiating between her own work and the work she is doing for us. Please, just let me know what you advise her to do.

--- Peggy

030524


Margaret Sims /EAC/GOV  
06/26/2006 05:27 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject US News Inquiry

I found a voice mail message today (but I don't know when it came in) from Scott Michaels of U.S. News & World Report. He wanted to talk about vote fraud. His phone number is 202-955-2006. If you need to talk with me about this tomorrow, I will be in the office in the afternoon. (In the morning, I have to make up hours for my COTR training.) --- Peggy

030525

Jeannie Layson /EAC/GOV  
06/13/2006 03:54 PM

To "Mixon, Denise"  
<Denise.Mixon@mail.house.gov>@GSAEXTERNAL  
cc  
bcc  
Subject RE: New Information 

Denise,

Per our conversation, EAC is conducting several activities regarding voting fraud and voter intimidation through our research mandate and the guidance we issued regarding the implementation of the statewide voter registration lists (will cut down on fraud; produce cleaner voter rolls). Please let me know if you have questions or if you need more info. Also, I'd be glad to help if you already written something, and you just need help filling in the specifics or making the connection b/w the two activities below. My direct number is 202-566-3103.

#### STATEWIDE VOTER REG. LISTS

HAVA mandates that every state have a statewide voter registration list in place by Jan. 1, 2006. In July 2005, the EAC issued its first set of voluntary guidance to assist states in developing their statewide voter registration databases. This important requirement – designed with the dual goal of improving accuracy of voting lists while also reducing the possibility of fraud – has been a particularly difficult requirement for many states to implement. Some states, such as Michigan and Kentucky, have served as national models for such a system. And yet, most states had no such systems in place when HAVA was passed, so the EAC has worked diligently by seeking broad public input to provide interpretive guidance, as well as technical assistance to states through an on-going partnership we have established with the National Academies of Science. EAC plans to issue future guidance on interoperability, security, matching protocols and information sharing related to these statewide databases.

#### VOTING FRAUD AND VOTER INTIMIDATION RESEARCH

Section 241 enumerates a number of periodic studies of election administration issues that the EAC may elect to conduct. "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)." Sections 241(b)(6) and (7) list the following election administration issues: nationwide statistics and methods of identifying, deterring, and investigating voting fraud in election for Federal office; and identifying, deterring, and investigating methods of voter intimidation. Building on this reference to studies of voting fraud and voter intimidation, EAC is conducting preliminary research on these issues. Activities include: (1) identify what constitutes voting fraud and voter intimidation affecting Federal elections; (2) perform background research,

030526

including Federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identify and convene a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) write a report summarizing the key findings, including suggestions for specific activities to address these topics.

EAC's efforts Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

Margaret Sims /EAC/GOV  
05/24/2006 03:17 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov  
bcc  
Subject Re: press interview

Thanks for the "heads up". --- Peggy

"Tova Wang" <wang@tcf.org>



"Tova Wang"  
<wang@tcf.org>  
05/24/2006 02:52 PM

To psims@eac.gov  
cc  
Subject press interview

Hi Peg,

Just wanted to give you the heads up that I did an interview with a reporter from The Hill today on fraud. As far as I know he is simply referring to me as a fellow at TCF and I did not discuss the project in any way

**Tova Andrea Wang**  
Democracy Fellow  
**The Century Foundation**  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

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[Click here](#) to receive our weekly e-mail updates.

030528



**Margaret Sims /EAC/GOV**  
05/04/2006 02:23 PM

To Jeannie Layson/EAC/GOV@EAC  
cc bwhitener@eac.gov  
bcc  
Subject Fw: Voting Fraud-Voter Intimidation Working Group Meeting

Oops! I forgot to cc. you on this. --- Peggy

— Forwarded by Margaret Sims/EAC/GOV on 05/04/2006 02:23 PM —

**Margaret Sims /EAC/GOV**  
05/04/2006 02:07 PM

To Paul DeGregorio, Ray Martinez, Donetta Davidson, Gracia Hillman  
twilkey@eac.gov, jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,  
cc Adam Ambrogi/EAC/GOV@EAC, Elieen L. Colver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, bbenavides@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Voting Fraud-Voter Intimidation Working Group Meeting


Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims  
Election Research Specialist

030529

Margaret Sims /EAC/GOV  
03/15/2006 02:57 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Status: Preliminary Research on Voting Fraud/Voter Intimidation 


History  This message has been replied to

Both Tova and Job are working together on Voting Fraud AND Voter Intimidation. They are conducting interviews together and reviewing the same resource materials. The only real split in responsibilities is that Job is identifying relevant case law for both to review by perusing search results from inquiries based on search terms to which both agreed, and Tova is doing the same initial culling of voting fraud/voter intimidation news articles found using search terms to which both agreed. (These initial reviews are to identify relevant case law and news articles, and to dump the false drops.) The reason for the two consultants is that, given the politically sensitive nature of the topics, the Commission wanted consultants who have represented opposing philosophies. The Project Working Group that will be reviewing initial research results and providing input to EAC, also has representatives from opposing camps.

I'm afraid to provide an estimated report release date because these are very sensitive issues and the Commissioners may take some considerable time before they agree to release a report. (Look at the delay in releasing the Rutgers study on provisional voting and voter ID.) -- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
03/15/2006 08:21 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Status: Preliminary Research on Voting Fraud/Voter Intimidation 

That's it. Please confirm that Tova is working on voter intimidation and Job is working on vote fraud. And since the commissioners have to approve the report before it's released, should I say a target release date is this summer?

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
03/14/2006 05:29 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Status: Preliminary Research on Voting Fraud/Voter Intimidation

030530

Jeannie:

Karen asked me to provide a response to the following question you received from Roy Saltman:


(2) On p. 27 of the 2005 Annual Report, it states that EAC contracted with two consultants to conduct preliminary research on the issues of voting fraud and voter intimidation. Can you tell me who these organizations or individuals are, and when their reports might be available? If they are available now, how can I obtain them?

The two consultants are Tova Wang and Job Serebrov. We expect the consultants to file a report with the EAC in May. EAC Commissioners will have to review and accept the report before it can be released.

Hope this works for you. --- Peggy

030531

Jeannie Layson /EAC/GOV  
03/15/2006 09:21 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Status: Preliminary Research on Voting Fraud/Voter  
Intimidation 

That's it. Please confirm that Tova is working on voter intimidation and Job is working on vote fraud. And since the commissioners have to approve the report before it's released, should I say a target release date is this summer?

Jeannie Layson  
U.S. Election Assistance Commission  
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www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
03/14/2006 05:29 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Status: Preliminary Research on Voting Fraud/Voter  
Intimidation

Jeannie:

Karen asked me to provide a response to the following question you received from Roy Saltman:


(2) On p. 27 of the 2005 Annual Report, it states that EAC contracted with two consultants to conduct preliminary research on the issues of voting fraud and voter intimidation. Can you tell me who these organizations or individuals are, and when their reports might be available? If they are available now, how can I obtain them?

The two consultants are Tova Wang and Job Serebrov. We expect the consultants to file a report with the EAC in May. EAC Commissioners will have to review and accept the report before it can be released.

Hope this works for you. --- Peggy

030532

Jeannie Layson /EAC/GOV  
11/21/2005 02:17 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Chair Ltr to Donsanto-DOJ 

Peg,  
My suggested edits are attached.



Chair Ltr to Donsanto-DRAFT j| edits.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030536

organizations regarding these topics, and summarize this research and all source documentation;

Deleted: deliver a summary  
Deleted: of

- **Establish a Project Working Group** - in consultation with EAC, establish a working group composed of key individuals and representatives of organizations knowledgeable about voting fraud and voter intimidation, provide a description of what constitutes voting fraud and voter intimidation and the results of the background research to the group, and convene the group to discuss potential avenues for future EAC research on this topic;

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- **Produce a Report** - Provide a report to EAC summarizing the preliminary research and working group deliberations, including recommendations for future EAC research, if any;

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Deleted: Group  
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- **Assist EAC in Initiating Future Research** - if EAC decides to pursue one or more recommendations for future research, draft the project scope and statement of work for the request for proposals.

Deleted: Statement

It would be most helpful if you could offer your expertise to our team of consultants and the EAC project manager, Peggy Sims. We will contact you to set up an initial interview, which will focus on the identification and prosecution of offenses involving voting fraud and voter intimidation, as well as possible resources on these subjects for our consultants' review. Our consultants and project manager may have follow up questions as the research proceeds. It also would be helpful if you would attend the working group meeting to contribute to their discussion.

Deleted: Work  
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If you have any questions about the research or this request, please contact Peggy Sims by email at [psims@eac.gov](mailto:psims@eac.gov) or by phone at 202-566-3120.

Deleted: . This interview  
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Deleted: could

Sincerely yours,

Deleted: participate in the meeting of the project

Gracia Hillman  
Chair

Deleted: Working  
Deleted: Group  
Deleted: and

Edgardo Cortes /EAC/GOV  
11/16/2005 03:35 PM

To Juliet E. Thompson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC

cc

bcc

Subject Katrina List request

History:  This message has been replied to.

I had a conversation this morning with Tova Wang concerning post Katrina related voter information and education. She requested a list of the people who attended the EAC Katrina meeting. Is that something I can provide her? I don't think its an issue since its just a list of publicly available contact info , but I wanted to double check. Thanks.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

030535

Thomas R. Wilkey/EAC/GOV  
09/21/2005 04:48 PM

To: Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: Tova Wang

History: This message has been replied to

We knew of her role with The Century Foundation when she was chosen as her co-consultant on this project represents the right.  
I don't expect this to be a problem.  
Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
09/21/2005 04:45 PM

To: twilkey@eac.gov  
cc  
Subject: Tova Wang


Just thought you should know that one of our consultants has weighed in on Carter Baker. I'm sure we'll hear about this sooner or later. (I showed this to Carol.) <http://www.tcf.org/list.asp?type=TN&sort=date>

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

03053E



Carol A. Paquette/EAC/GOV  
09/20/2005 05:57 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Isn't this woman one of our contractors? 

Yes, she's one of the consultants working on the voter fraud project.

Carol A. Paquette  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
09/20/2005 04:52 PM

To cpaquette@eac.gov  
cc  
Subject Isn't this woman one of our contractors?

<http://www.tcf.org/list.asp?type=NC&pubid=1101>

**Carter-Baker Report: Some Bad Fixes for the Wrong Problems**  [Printer-Friendly](#)

Tova Andrea Wang, The Century Foundation, 9/19/2005

It is truly shocking how, given all the problems in the voting system and continued disenfranchisement, the terms of the debate have shifted to that of so-called "ballot integrity." It is reminiscent of how conservatives have misappropriated the concept of patriotism and the American flag, and used the power of language and messaging to distort the discussion, by using terms such as "partial birth abortion" or "death tax." The latest example of this is the just released report of the commission on election reform co-chaired by Jimmy Carter and James Baker.

The 2001 bi-partisan commission co-chaired by former President Carter and Gerald Ford, which The Century Foundation co-sponsored and I was on the staff of (and which had an entirely different membership), had a very different approach. There were differences about how best to implement the recommendations of the report. However, while we were concerned with accuracy and preventing fraud, we did not see that as a goal that was in conflict with ensuring the right to vote.

It was the 2001 commission that promoted the idea of statewide voter registration databases, so that we could both prevent fraud and ensure every registered voter was on the voting list the list and able to vote. We proposed the idea that any voter who comes to the polls and does not appear on the list be given a provisional ballot. We stated that when a felon completes his sentence, he should get his voting rights back. We enumerated several ways to ensure that "no individual, group or community [holds] a justified belief that the electoral process works less well for some than for others." We even recommended an election day holiday!

030537

This stands in stark contrast to the entire tenor of the Carter-Baker report, which presumes that fraud committed by voters is the biggest problem confronting our election system. There is simply no strong evidence of this, and some of the remedies proposed will take us backwards in the fight to increase voter participation.

In addition to proposing limited felon re-enfranchisement and providing negligible input into the very important and controversial provisional ballot questions, the report really focuses on requiring all voters to present government issued photo ID, such as the REAL ID, in order to vote, and promoting the expensive and complex idea of making all statewide databases "interoperable" nationwide. As I and others have documented repeatedly (see [here](#), [here](#), and [here](#)) voter fraud at the polling place is not our major problem, and identification requirements serve to disenfranchise many groups of voters.

Here's what the problems are in American elections today: too few—not too many—people vote; the voter registration system is not working for voters or elections administrators; voters are still systematically disenfranchised, due to such policies as felon disenfranchisement, flawed felon purges, inaccessible polling sites, misallocation of voting machines, and inappropriate challenges at the polls; voters are individually disenfranchised by continued, often race based, voter intimidation and deceptive practices; and there is a general mistrust of the election system by the American people.

Why don't we start there instead.

*Tova Andrea Wang is senior program officer and democracy fellow at The Century Foundation.*

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030538

Karen Lynn-Dyson/EAC/GOV

To Thomas R. Wilkey/EAC/GOV@EAC

06/21/2005 12:03 PM

cc Jeannie Layson/EAC/GOV@EAC

bcc

Subject Employing Tova Wang and others to start writing " Trends in Election Administration"

History

✉ This message has been replied to.

Tom and Jeannie-

At yesterday's research briefing, the Commissioners approved the concept of a series of scholarly articles that would cover various "Trends in Election Administration"

There was general agreement that the EAC would produce, by the end of this year, two of these articles that might be on topics such as early voting, restoration of felon rights, vote centers, etc.

I'd like to have a brief meeting the end of this week or the beginning of next with you, Jeannie and myself to go over some of the finer points of this idea and to put in place a process to get this project moving.

Shall we meet Friday morning at 11:00?

I'd like for us to identify the writers we want to use and the process we will use to determine the selection of topics for articles. As the Chair suggested, we should also discuss in some detail, the editorial guidelines we will use that will guide the work that our writers will do for us.

Thanks

K

Karen Lynn-Dyson  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

030539



Gracia Hillman/EAC/GOV

10/30/2006 01:48 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

bcc

Subject The "Fraud/Intimidation" Report

Tom:


In light of your announcement this morning about Peg's continued illness, I am asking who has taken the responsibility to complete EAC internal review of the information that was submitted to us by the consultants and what is the timeline for completion of that review?

I am taking far too much criticism on this to just idly sit by saying "I don't know" when EAC will release the information.

Thank you,  
Gracia

030540

Thomas R. Wilkey/EAC/GOV  
10/30/2006 10:04 AM

To Jeannie Layson/EAC/GOV@EAC  
cc ggilmour@eac.gov, jthompson@eac.gov  
bcc  
Subject Re: Fw: response 

On the money as far as I am concerned

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
10/30/2006 09:03 AM

To ggilmour@eac.gov, jthompson@eac.gov, twilkey@eac.gov  
cc  
Subject Fw: response

Need you to let me know if this response is okay ASAP:

EAC staff presented a status report about this research project to our advisory boards at a public meeting in May. Since then, we've received a draft from the consultants and EAC staff is currently reviewing the data to ensure it is accurate and complete. After we've completed this process, we'll release a final report.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

----- Forwarded by Jeannie Layson/EAC/GOV on 10/30/2006 08:59 AM -----  
"Strickler, Laura" <StricklerL@cbsnews.com>

10/27/2006 05:34 PM

To jlayson@eac.gov  
cc

030541

Hey Jeannie - thanks for all of your help yesterday -

got any response/thoughts on this?

Thanks

**FOR IMMEDIATE RELEASE**

**CONTACT:** Drew Courtney or Josh Glasstetter

October 20, 2006

at 202-467-4999 / [media@pfaw.org](mailto:media@pfaw.org)

## **PFAW Presses Election Assistance Commission to Release Report Debunking Myth of Voter "Fraud"**

Despite requests, the Election Assistance Commission is refusing to release a report written months ago that reportedly pokes holes in the widespread myth that voter fraud is rampant in America. EAC Chairman Paul S. DeGregorio Thursday denied a request by People For the American Way Foundation (PFAWF) to make the taxpayer-funded findings available to the public in time for the November elections, now less than three weeks away. PFAWF President Ralph G. Neas said the information should be released immediately and questions whether the report is being suppressed for political reasons.

The existence of the report was revealed days ago by *USA Today*, which reported that instances in which non-eligible persons attempt to pass themselves off as voters and somehow cast fraudulent votes are exceedingly rare. PFAWF's sister advocacy organization, People For the American Way, has launched a petition drive asking the commissioners to release the report, since it will refute rampant allegations of voter fraud which have led to restrictive voting requirements.

"As we approach the elections, the last thing election officials need is to labor under the false

impression that ineligible people are trying to pass themselves off as qualified voters at the polls. They should be focusing on ways to keep the path to the ballot box clear for as many eligible voters as possible, instead of looking for nonexistent fraud that will slow down the process and possibly even discourage eligible voters,” said PFAW President Ralph G. Neas. “We need to raise confidence in our elections process, not allow harmful myths to stand – especially when the government has findings available to refute them.”

Neas sent a letter on behalf of PFAW Foundation to the EAC earlier this week asking that the report be made available to the public, but on Thursday the EAC denied the request. The report was written by Tova Wang, an elections scholar at the Century Foundation think tank, and Job Serebrov, an Arkansas attorney, and has been in the hands of the EAC commissioners for more than four months.

Neas said the report has critical implications for election legislation around the country. During the past few years, a number of states have passed legislation to combat supposed “voter fraud” through overly restrictive identification requirements and other impediments to the ballot box. According to USA Today, the report found such voter fraud to be exceedingly rare.

“We have plenty of problems to deal with. We’ve all seen long lines, unreliable voting equipment, purges that wrongly remove eligible voters from the roll. It turns out the problem is not that bad people are trying to vote, but that too many qualified voters are discouraged from voting. This report apparently confirms what common sense has told us for years – we need to make it easier for eligible voters to cast a vote that counts, not harder,” said Neas. “Instead of fighting nonexistent fraud, these restrictive new laws will discourage voters – people like senior citizens, students and disabled voters who may not have drivers’ licenses or other forms of ID required by these new laws. That’s just wrong, and is clearly not supported by the evidence.”

Neas said the new laws are often politically motivated. The misleadingly-named right-wing group the American Center for Voting Rights has supported extremely restrictive laws by pointing to supposed voting fraud.

“Any law that disadvantages certain groups of voters – like senior citizens and students – should be suspect. If the voters are disadvantaged, which political parties and candidates stand to gain? The same question should be asked about the reason the release of this report has been delayed. Is there a political motivation?” he asked. “Has this study been buried because anti-voter

activists like the American Center for Voting Rights find its conclusions inconvenient? That's unacceptable. The Commissioners of the EAC have had this report for months, even as they have testified before Congress on critical legislation that could have been informed by the report's findings. It's unconscionable."

Laws passed in several states this year raise barriers to the ballot box that would prevent poor, elderly, and minority voters from casting a ballot. PFAW's sister organization, People For the American Way Foundation, has challenged laws in Ohio, Missouri, and Arizona; in all three, the laws were either struck down or stayed until after the November election. Yet restrictions still in effect in a number of states could harm voters. One such provision, stringent ID requirement, has been likened to a modern day poll tax.

Said Neas, "All American citizens have a vested interest in having fair and open elections. This report contains valuable information that can help us do that. The EAC should release the report immediately, no matter what the political implications may be and hold public hearings to discuss the findings."

PFAW's petition can be found at [www.ReleaseTheReport.com](http://www.ReleaseTheReport.com).

**Laura Strickler, Producer**  
*CBS Evening News, Washington*  
Office: 202-457-1597  
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Fax: 202-457-1577  
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[stricklerl@cbsnews.com](mailto:stricklerl@cbsnews.com)

030544



Jeannie Layson /EAC/GOV  
10/27/2006 12:25 PM

To jthompson@eac.gov, ggilmour@eac.gov  
cc  
bcc  
Subject Fw: FOIA Request

Here we go...

— Forwarded by Jeannie Layson/EAC/GOV on 10/27/2006 12:25 PM —



"Judith Schaeffer "  
<jschaeffer@pfaw.org>  
10/27/2006 12:15 PM

To jlayson@eac.gov  
cc bwhitener@eac.gov  
Subject FOIA Request

Dear Ms. Layson:

Attached is a FOIA request from People For the American Way that we have also sent to you today by fax. Please do not hesitate to call me if you have any questions. Thank you in advance for your assistance and cooperation.

Sincerely,

Judith E. Schaeffer  
Deputy Legal Director  
People For the American Way  
jschaeffer@pfaw.org  
202-467-2381 (ph.)  
202-293-2672 (fax)



Letter from EAC Oct. 19.pdf EAC FOIA.doc

030545



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

**Via Facsimile Transmission ONLY**  
**202-293-2672**

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

Tel: (202) 566-3100 www.eac.gov Fax: (202) 566-3189  
Toll free: 1 (866) 747-1471



October 27, 2006

Via email and fax

Jeannie Layson  
Director of Communications  
United States Election Assistance Commission  
1225 New York Avenue N.W.  
Suite 1100  
Washington, DC 20005

Re: FOIA Request

Dear Ms. Layson:

In accordance with the Freedom of Information Act, 5 U.S.C. § 552, I am writing on behalf of People For the American Way to request a copy of a study concerning voter fraud conducted by Tova Wang and Job Serebrov and presented to the EAC in report form sometime subsequent to May 2006.

As you may know, I wrote to the EAC on October 18, 2006 on behalf of People For the American Way Foundation, asking for a copy of the report of this study. On October 19, I received a letter from Paul S. DeGregorio, Chair of the EAC, denying the request. (A copy of Mr. DeGregorio's letter is attached.) According to Mr. DeGregorio, the report was a "draft" and would not be released. However, as even Mr. DeGregorio's letter underscores, the report we are seeking is not a "draft" but rather the *authors'* report of their study of voter fraud. That the Commission may, in the words of Mr. DeGregorio, "release a final report from this study" does not make the study itself a draft. In any event, the Commission should not, and in our view cannot, withhold from public disclosure this important study, which was funded by federal taxpayers.

In accordance with FOIA, I would appreciate your furnishing the requested report to us at your earliest convenience, and no later than 20 working days from today. If you deny this request in whole or in part, please cite the specific exemption(s) that you maintain allows the Commission to withhold the release of this report in whole or in part, and, as also required by law, please release any segregable portion of the report that remains after the exempted material has been deleted. We are willing to pay the statutory fee for the copying of this report.

FOIA Request  
October 27, 2006  
Page 2

Please do not hesitate to call our Deputy Legal Director, Judith E. Schaeffer, if you have any questions about this request. Thank you in advance for your assistance and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph G. Neas". The signature is written in a cursive, flowing style.

Ralph G. Neas  
President

Encl.

030548

Bryan Whitener /EAC/GOV  
10/25/2006 04:30 PM

To Jeannie Layson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

cc

bcc

Subject EAC response requested

— Forwarded by Bryan Whitener/EAC/GOV on 10/25/2006 04:25 PM —



"Jonathan Bechtle "  
<JBechtle@effwa.org>  
10/25/2006 04:14 PM

To "Bryan Whitener" <bwhitener@eac.gov>

cc

Subject FW: Shame on hiding report finding low voter fraud

Bryan,

This article slamming the EAC ran in a major Washington newspaper on Tuesday (the link is <http://www.spokesmanreview.com/opinion/story.asp?ID=156039>, and the text is included below). All I've heard about the report is what USA Today mentioned, plus Tom Wilkey told me that the report is currently being worked on for a near-future release.

I'm planning to respond to this article on the issue of whether voter fraud is widespread, and wanted to also defend the EAC's actions, which I think were wise. It sounds like the news editors just conjectured what happened, as they indicated no attempt to find out for sure why the report was withheld.

In responding to them, it would be nice to have your side of the story to help me accurately explain what happened. Can you give me any comments on why the report was held? Was it because the EAC was trying to help those who are "peddling suspicions of voter fraud"?

Any thoughts you have would be helpful.

Cordially,

Jonathan

**Jonathan Bechtle, J.D.**  
Director, Voter Integrity Project  
**Evergreen Freedom Foundation**  
(360) 956-3482  
[www.effwa.org](http://www.effwa.org)

*"...because freedom matters!"*

Editorial

## **Our view: Fraudulent fears**

### **Shame on hiding report finding low voter fraud**

October 24, 2006

Proponents of stringent election laws designed to stop fraud surely don't want to hear that there's little evidence of chicanery. That's probably why the results of a federal study on the matter, which was delivered in May, were kept quiet.

Many states have adopted restrictions on voter registration and polling place practices, and the U.S. House of Representatives passed a photo-identification bill aimed at poll-site voting. The Senate is expected to take up the issue next year.

The premise behind all of this legislation is that fraud is widespread. But the U.S. Election Assistance Commission, which was established by Congress to ensure voting integrity, commissioned a study that questions that assumption. USA Today obtained the study four months after its completion and recently reported on the findings:

"There is widespread but not unanimous agreement that there is little polling-place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, non-citizen voting and felon voters."

That's an awfully inconvenient summation for those who back stricter voting laws and consistently assert that there's rampant fraud while providing scant proof.

Voter fraud is a highly politicized issue. The congressional bill on photo IDs drew the support of 98 percent of Republicans and the opposition of 98 percent of Democrats. And voters in Washington state lived through the partisan wrangling after the razor-thin victory by Chris Gregoire in the 2004 gubernatorial election, when mistakes were quickly relabeled "fraud."

When a favorite candidate loses a close race, partisans attack the system of voting. It happened in Florida in 2000 and in Washington state in 2004. What's interesting about the federal commission's study is that it points to the system that most reforms would not touch as having the highest potential for fraud.

Absentee balloting is more susceptible to manipulation, the report states, via coercion and forgery. But it's polling places that have been placed under heavy scrutiny by reformers.

030550

The lack of focus on mail-in balloting is probably a political calculation, because it's popular. Most counties in Washington state have moved to that system.


Politicians can get more mileage hyping the possibility of votes by illegal immigrants and felons, but their solutions can serve to discourage voting by honest citizens.

Unfortunately, the federal commission has played into the hands of those peddling suspicions by choosing not to release its report to the public.

The public deserves to know what is happening with its election systems as it weighs the merit of various reform proposals. But a commission that was formed to zero in on real problems has undermined its credibility by sitting on a report that highlights them.

## Deliberative Process Privilege

Margaret Sims /EAC/GOV  
04/10/2007 02:33 PM

To Jeannie Layson/EAC/GOV@EAC  
cc jthompson@eac.gov  
bcc  
Subject Re: questions from NYT 

Jeannie:

1. The "widespread but not unanimous agreement" quote from the consultants' draft addressed perceived election fraud in the **polling place**. It did not address the perceived frequency of other election fraud. EAC wrote the language for the final report after reviewing all of the information submitted by the consultants (summaries of interviews, articles and books, case law, and incidents reported in the press), not just the consultants' draft report.

2. Intimidation - The difference between the draft and the report is due to differing definitions of intimidation. Intimidation, under federal law, has to include physical or economic threat; however, our consultants took a broader view of the term and included incidents in which voters were made to feel uneasy or unwelcome. Some of the literature and interviews suggest that still others define intimidation to include mistakes made by harried workers on election day and state laws and practices that are perceived to make voter participation more difficult (challenger laws, voter identification laws, polling place locations, and distribution of voting machines).

3. What is the question here? Most egregious instances of fraudulent voter registration applications are caught before the "applicants" names are ever added to the rolls -- so no **voting** fraud results. Based on the information we have, most instances seem to be the result of operatives who are paid to register voters and who submit the false applications in order to receive that pay, not because they want to influence the outcome of an election.

4. EAC organized the content of its report in the manner that seemed most suitable. In this case, EAC conclusions were presented after the information upon which conclusions were based. I'm not sure what the reporter means by referring to conclusions in the appendices, unless he is referring to the consultants' conclusions, which are not necessarily EAC's.

5. Do we know which interviewees raised this issue? The reason for outsourcing EAC research is that we don't have the resources in-house to do the job ourselves. EAC hired bipartisan "expert" consultants to do this research (including the interviews) for us. The agency would not normally verify the summaries with the interviewees unless there were indications that the summaries generally were inaccurate. It would not be cost effective for us to routinely verify everything submitted by our consultants' and contractors.

-- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/10/2007 01:19 PM


To jthompson@eac.gov, psims@eac.gov  
cc  
Subject questions from NYT

030552



## Deliberative Process Privilege

Margaret Sims /EAC/GOV  
04/10/2007 02:33 PM

To Jeannie Layson/EAC/GOV@EAC  
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bcc  
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-- Peggy

Jeannie Layson/EAC/GOV


Jeannie Layson /EAC/GOV  
04/10/2007 01:19 PM

To jthompson@eac.gov, psims@eac.gov  
cc  
Subject questions from NYT

030553

## Deliberative Process Privilege

Margaret Sims /EAC/GOV  
04/10/2007 02:33 PM

To Jeannie Layson/EAC/GOV@EAC  
cc jthompson@eac.gov  
bcc  
Subject Re: questions from NYT 

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/10/2007 01:19 PM

To jthompson@eac.gov, psims@eac.gov  
cc  
Subject questions from NYT

030554

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
05/02/2007 09:24 AM

To Thomas R. Wilkey/EAC/GOV, Donetta Davidson, Rosemary  
E. Rodriguez/EAC/GOV, Caroline C. Hunter/EAC/GOV,  
Gracia Hillman,  
cc Eileen L. Collver/EAC/GOV, Stephanie Wolson/EAC/GOV,  
Stacie Fabre,  
bcc

Subject Draft letter to Tova Wang's attorney – different than other  
pending letter

Commissioners & Tom,

Curtis Crider informed me yesterday evening that Tova Wang through her counsel is refusing to talk to the Inspector General's office as a part of the ongoing review based on the contract clause that she has asked to be relieved from. It is clear that this clause does not in any way limit her ability to talk to EAC (the part with which she contracted) and EAC's Office of Inspector General is a division of EAC. As such, I have prepared a letter to go to her counsel today stating these facts. I do not in any way opine on the waiver issue, but rather clarify that EAC's Office of Inspector General is a part of EAC and that she is not precluded by this clause from talking to Curtis or any member of the investigative team that he has assembled.

Unless there is opposition, I will send this out by 10:30 this morning. Thanks for your quick review. Let me know if you have any questions.



letter to Wang's attorney re discussion with IG.doc

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

030555

May 2, 2007

James P. Joseph  
Arnold & Porter L.L.P.  
655 Twelfth Street, NW  
Washington, DC 20004-1206

**Via Facsimile Transmission and U.S. Mail**  
**202-942-5999**

RE: Interview of Ms. Wang by EAC Inspector General

Mr. Joseph:

EAC is currently considering the request made by Ms. Wang regarding the confidentiality clause which she signed as a part of her contract with U.S. Election Assistance Commission. As I am sure you can appreciate, EAC takes very seriously the contract provisions that it and Ms. Wang entered into and is carefully weighing her request concerning waiver of any of those provisions.

However, the EAC Inspector General has brought to my attention the fact that you and your client believe that this clause impacts her ability to speak to the EAC Inspector General and/or its contact investigators regarding the contract, her work product and the final report derived from her work product. The contract clause in question does not limit in any way Ms. Wang's ability to speak to a representative of EAC, including any representative of the EAC Office of Inspector General, regarding these matters.

I trust that this clarifies any concerns that you or your client may have regarding cooperating with the Inspector General's current review of the contract in question, the study that was conducted in part by Ms. Wang, and any product that resulted from that contract and study. However, if you have any additional questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Juliet T. Hodgkins  
General Counsel

cc: Job Serebrov

030556

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
05/02/2007 09:24 AM

To Thomas R. Wilkey/EAC/GOV, Donetta Davidson, Rosemary  
E. Rodriguez/EAC/GOV, Caroline C. Hunter/EAC/GOV,  
Gracia Hillman,  
cc Eileen L. Colver/EAC/GOV, Stephanie Wolson/EAC/GOV,  
Stacie Fabre,

bcc

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letter to Wang's attorney re discussion with IG.doc

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

030557

May 2, 2007

James P. Joseph  
Arnold & Porter L.L.P.  
655 Twelfth Street, NW  
Washington, DC 20004-1206

**Via Facsimile Transmission and U.S. Mail**  
**202-942-5999**

RE: Interview of Ms. Wang by EAC Inspector General

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Sincerely,

Juliet T. Hodgkins  
General Counsel

cc: Job Serebrov

030558



"chandler davidson"  
<fcd@rice.edu>  
04/10/2007 03:28 PM

To ghillman@eac.gov  
cc  
bcc  
Subject Re: Eagleton Study

Gracia,

I have given the Eagleton Voter ID study a quick read.

Here are my comments (numbers refer to page numbers):

- 3. Of the scholars involved, the ones I know are very well respected by their peers.
  - 4. Of the peer review group, the ones I know are also respected and represent quite different positions on the political spectrum.
  - 6. A good statement of the tentative nature of their findings, after having clearly stated the two points of view at issue.
  - 6-7. Limitations of model made clear.
  - 10-11. Findings-and their tentative nature--elaborated on.
  - 10-12. Ideas for further research are excellent.
  - 13-15. The summary of research on determinants of turnout includes the major studies by the top-ranked people in this subspecialty within political science.
- Remainder of paper: Analysis sound and straightforward, with appropriate caveats entered. The writing, by the way, is lucid and easy to grasp by the educated lay person--something that cannot be said for many reports of this kind in government documents and academic journals!

In short, my reading of this paper leads me to believe its findings are carefully stated and fully justified, with the appropriate caveats regarding interpretation. I would be surprised if this paper, had it been submitted to a top-ranked, peer-reviewed political science journal, perhaps in abbreviated form, were not accepted for publication.

Cordially,

Chandler

Thanks. Please note that Eagleton did 2 studies for us (under one contract). One on Provisional Voting and one on Voter ID.

It is the Voter I D study that I'd appreciate you taking a look at.

Many thanks again.

-----  
Sent from my BlackBerry Wireless Handheld

030559

**U.S. ELECTION ASSISTANCE COMMISSION**1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

May 24, 2005

Mr. Keith Osterhage, Director  
Office of Research and Sponsored Programs  
Rutgers, The State University of New Jersey  
3 Rutgers Plaza  
New Brunswick, New Jersey 08901

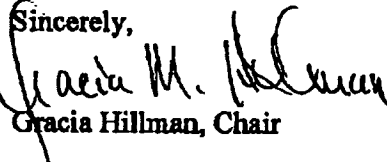
Dear Mr. Osterhage:

Enclosed is a signed contract in the amount of \$560,002.00 for the provision of research assistance to the U.S. Election Assistance Commission (EAC) for the development of voluntary guidance on provisional voting and voter identification procedures. The EAC has accepted the basic proposal submitted by the Eagleton Institute of Politics and has also elected to include the optional survey of local election officials. This proposal was evaluated as providing the best value to the government through a competitive source selection process. The proposal is incorporated by reference into the contract.

The U.S. Election Assistance Commission (EAC) was created by the Help America Vote Act of 2002 (HAVA) and is charged with assisting the States in meeting the election reform requirements mandated by this legislation. One of the EAC's principal tasks is to provide guidance to the States on the interpretation of HAVA and its requirements. The provisional voting and voter identification effort that will be supported by this contract is a major element of EAC's Fiscal Year 2005 research agenda. The objective of this work is to develop guidance on these topics that States can utilize in the 2006 election cycle.

To acknowledge your receipt and acceptance of this contract, please countersign and date below and return one copy of this letter to the attention of Carol A. Paquette, Interim Executive Director.

We look forward to working with Rutgers University and the Eagleton Institute on this very important research effort.

Sincerely,  
  
Gracia Hillman, Chair

Keith Osterhage  
Rutgers, The State University of New Jersey



May 24, 2005

**CONTRACT TO PROVIDE RESEARCH ASSISTANCE TO THE EAC FOR THE DEVELOPMENT OF VOLUNTARY GUIDANCE ON PROVISIONAL VOTING AND VOTER IDENTIFICATION PROCEDURES**

**0.0 Background:** Sec. 302(a) of HAVA requires that all States allow the casting of provisional ballots in instances where a voter declares their eligibility to vote but their name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. This section describes several requirements for implementation of provisional voting, but the States have considerable latitude in specifying how to carry out these requirements. The EAC seeks to examine how provisional voting was implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 Federal elections.

HAVA Sec. 303(b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 elections and to prepare guidance on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents will result.

**1.0 Objective:** The objective of this contract is for EAC to obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics in time for implementation for the 2006 Federal elections. The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

**2.0 Scope:** In general the Contractor shall be responsible for all research and analysis activities, including the conduct of public hearings for fact finding and public comment purposes. However, in light of the need to get started on this work, the EAC conducted a public hearing on provisional voting on February 23, 2005.

An initial framework for provisional voting policy has been set by the court decisions rendered on the election procedures utilized in the 2004 election. The 6<sup>th</sup> Circuit decision, in particular, has drawn some boundaries which must be given

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due regard in the course of considering future policy alternatives for provisional voting.

Notice of public meetings and hearings is required to be published in the Federal Register. The Contractor shall be responsible for preparing the notice documents, and the EAC will submit the notices and cover the cost of publication. In addition, draft guidance documents must be published in the Federal Register to obtain public comment prior to their adoption. Again, the Contractor will work with the EAC to prepare the draft documents for publication, which the EAC will submit and pay for the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

### **3.0 Specific Tasks**

For ease of reference, following task 3.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is anticipated that the work on these two topics will be conducted essentially concurrently.

- 3.1 Update the project work plan, as required. The Contractor shall update and deliver the Project Plan not later than 10 days after contract award. This plan shall describe how the Contractor will accomplish each of the project tasks, including a timeline indicating major milestones. A single document will be prepared to include both provisional voting and voter identification tasks. The updated Project Plan shall be formally briefed to the EAC Project Manager and lead Commissioner.
- 3.2 Submit monthly progress reports. The Contractor shall submit a monthly progress report within 2 weeks of the end of each month. This report shall provide a brief summary of activities performed and indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect schedule should be identified for resolution. Budget status shall also be provided.
- 3.3 Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager and the lead Commissioner for this work to discuss research findings and progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor Project Manager and the EAC Project Manager as the work progresses. The Contractor may also be required to periodically brief the full Commission on their work.

### Provisional Voting

- 3.4 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of the disparities and similarities of how provisional voting was implemented around the country will provide a baseline for the consideration of future approaches. Seventeen States never had provisional voting before HAVA was enacted, while many other States did. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

Topics of particular interest include the following:

- How did States prepare for the onset of the HAVA provisional ballot requirement?
- How did this vary between States that had previously had some form of provisional ballots and those that did not?
- How did litigation affect the implementation?
- How effective was provisional voting in enfranchising qualified voters?
- Did State and local processes provide for consistent counting of provisional ballots?
- Did local election officials have a clear understanding of how to implement provisional voting?

- 3.5 Recommend alternative approaches for future implementation of provisional voting. The Contractor shall conduct a literature review to identify other research results and data available on this topic. The EAC Election Day Survey, for example, contained several questions on provisional voting. The EAC will make these survey data available to the Contractor. Based on their analysis of available research and the results of Task 4.5, the Contractor shall diagnose the problems and challenges of provisional voting implementation and hypothesize alternative approaches.

The Contractor shall assess the efficacy of these alternatives in relation to the following inter-related policy objectives: (1) enabling the maximum number of eligible voters to cast ballots that will be counted; (2) providing procedural simplicity for voters, poll workers, and election officials; (3) minimizing opportunity for voter fraud; and (4) maintaining a reasonable workload for election officials and poll workers. Additional policy considerations may be identified in the course of this research effort. The Contractor shall document and brief these alternatives to the Commission.

- 3.6 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors and Standards Board. EAC will convene a meeting or teleconference of the Boards for the discussion of this document. The Contractor shall provide the document in advance and participate in the meeting to answer questions and

record comments.

- 3.7 **Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC, the Board of Advisors and the Standards Board and prepare the draft guidance for publication in the Federal Register by the EAC.**
- 3.8 **Arrange one public hearing for receiving public comment on draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. EAC will handle publicity for the meeting.**
- 3.9 **Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.**

#### Voter Identification Requirements

- 3.10 **Collect and analyze State legislation, administrative procedures, and court cases. It is assumed that the collection of information for analysis of voter identification requirements will be performed concurrently with the research for Task 4.5. An understanding of the disparities and similarities of how voter identification requirements were implemented around the country will provide a baseline for the consideration of future approaches. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.**
- 3.11 **Convene a half day public hearing on the topic of voter identification requirements. This hearing should occur early in the research process as an informational hearing where all points of view on this topic can be aired. The Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC. The Contractor shall identify three panels of three to four speakers each. The Contractor shall arrange for speaker attendance to include travel and per diem expenses. The EAC will provide publicity for the hearing. The Contractor shall prepare a document summarizing the proceedings and containing all testimony provided.**
- 3.12 **Recommend alternative approaches for future implementation of HAVA voter identification requirements. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on their analysis of available research and the results of Task 4.11, the Contractor shall diagnose the problems and challenges of voter identification and hypothesize alternative approaches. The Contractor shall**

coordinate with the EAC to identify appropriate policy objectives by which to assess these alternatives. The Contractor shall document and brief these alternatives to the Commission.

- 3.13 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors and Standards Board. EAC will convene a meeting or teleconference of the Boards for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 3.14 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC, the Board of Advisors and the Standards Board and prepare the draft guidance for publication in the Federal Register by the EAC.
- 3.15 Arrange a second public hearing for receiving public comment on the draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. EAC will handle publicity for the hearing.
- 3.16 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.
- 4.0 Contract Type. The contract type will be Time and Materials in the amount of \$560,002.00.
- 5.0 Place of performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may be performed at the EAC offices. Some travel will be required.
- 6.0 Period of Performance. The period of performance is from date of award until December 30, 2005.
- 7.0 Schedule of Deliverables:
1. Updated project plan – 10 days after contract award
  2. Progress reports – monthly
  3. Briefings – as required
  4. Analysis report on provisional voting, including compendium of legislation, procedures and litigation - TBD
  5. Alternatives report on provisional voting – TBD

6. Preliminary draft guidance on provisional voting - TBD
  7. Draft guidance on provisional voting for publication - 9/2005
  8. Public hearing on draft guidance - 30 days after publication
  9. Final guidance on provisional voting for EAC adoption - 10/2005
  10. Analysis report on voter identification requirements, including compendium of legislation, procedures and litigation - TBD
  11. Public hearing on voter identification requirements - TBD
  12. Summary of voter identification requirements hearing - TBD
  13. Alternatives report on voter identification requirements - TBD
  14. Preliminary draft guidance on voter identification requirements - TBD
  15. Draft guidance on voter identification requirements for publication - 11/2005
  16. Public hearing on draft guidance - 30 days after publication
  17. Final guidance on voter identification requirements to EAC for adoption - 12/2005
- 8.0 Inspection and Acceptance Criteria. Final inspection and acceptance of all work performed, reports, and other deliverables will be performed at the offices of the EAC. The Contracting Officer's Representative for this effort will be Karen Lynn-Dyson. She will review and approve all work on behalf of the Commission.
- 9.0 Invoicing. Invoices may be submitted monthly using Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal. Invoices shall be mailed to the attention of Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington D.C. 20005.
- 10.0 Accounting and Appropriation Data: Funds in the amount of \$560,002.00 are available for this task order.
- 11.0 General Provisions:
- 11.1 Proposal Incorporated. The Contractor's proposal is incorporated by reference into the statement of work.
  - 11.2 Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The EAC reserves the right to inspect and review any products or services that have been tendered for acceptance. The EAC may require correction or re-performance of nonconforming items at no increase in contract price. The EAC must exercise its post-acceptance rights within ten (10) days after the defect was discovered or should have been discovered.
  - 11.3 Contract Terms. Should there be a conflict between the contract clauses included in this document and the "Purchase Order Terms and Conditions" on the back of GSA Form 300, which is used to record contract financial

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data, the contract clauses in this document shall take precedence.

**11.4 Changes.** Changes in the terms and conditions of this Contract may be made only by written agreement signed by authorized representatives of both parties.

**11.5 Disputes.** This Contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any dispute arising under the Contract.

**11.6 Excusable Delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the EAC, in writing, as soon as possible after the beginning of an excusable delay. The Contractor shall explain the basis for the excusable delay, and correct the problem as soon as possible. The Contractor shall notify the EAC, in writing, at the end of the delay.

**11.7 Other compliances.** The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

**11.8 Compliance with laws unique to Government contracts.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409, relating to whistle blower protections; 49 U.S.C. 40118, Fly American, and 41 U.S.C. 423 relating to procurement integrity.

**11.9 Limitation of Government Liability.** The Contractor is not authorized to make expenditures or incur obligations exceeding the total amount allocated to the contract. The Contractor is required to notify the Contracting Officer's Representative when 75% of funding has been obligated.

**11.10 Termination for convenience.** The EAC, by written notice, may terminate this contract without fault, in whole or in part, when it is in the best interest of the government. In the event of contract termination for convenience, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulations in effect on the date of this contract.



Gracia Hillman/EAC/GOV  
03/06/2007 11:11 AM

To karen lynn dyson  
cc Juliet E. Hodgkins/EAC/GOV, Jeannie Layson  
bcc  
Subject Feedback on Draft Statement

Karen:

Following up on yesterday's briefing about the Draft Statement on the Voter ID study, here is my feedback.

1. I agree that we should send out all of the appendices. I think EAC needs to send out as much information as we have available at this time from the Eagleton study..

2. The statement should clarify that at a minimum we are looking to compare 2008 voter participation stats with the 2004 stats used in the Eagleton report. (FYI - The term voter participation includes registration and turnout.)

Perhaps that explanation should be the fourth paragraph on Page 1, explaining why EAC decided to not perform an analysis at this time of the impact of voter id requirements on turnout.

3. I agree that the last section of the statement should include EAC's intention to convene a (one) large working group of advocates, academics (statisticians included) and election officials to discuss what the next EAC study on this topic should cover and what the timeframe for such study should be.

Lastly, I read this as a draft and "assume" it will be edited to take care of grammatical and spelling errors.

Thanks,  
Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
[www.eac.gov](http://www.eac.gov)

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Gracia Hillman/EAC/GOV  
03/06/2007 11:24 AM

To Karen Lynn-Dyson  
cc Juliet E. Hodgkins/EAC/GOV, Jeannie Layson  
bcc  
Subject Further to the Eagleton Study

I forgot to add the following comment.

If the Eagleton testimony from February 8 is not included as an attachment to our Statement, then at the very least I think our statement should inform the reader that Eagleton testified on Feb 8 and the statement is posted on our website.

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Attorney-Client  
Privilege

Deliberative Process  
Privilege

Juliet E. Hodgkins/EAC/GOV  
03/28/2007 06:19 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, jlayson@eac.gov  
bcc

Subject Comments on Eagleton's response

Karen will present our discussion and conclusions tomorrow. However, when we left the briefing, I think everyone believed that I would provide comments since I will not be able to be on the phone. As such, I am transmitting my comments through this email. I will respond or address Eagleton's numbered paragraphs (note that there is no paragraph 4).

1. There is no need to address this as Eagleton agrees that they only reviewed one election's statistics. The statement of work for the contract told them to review the status of the law in 2004, but in no way limited their analysis to a single year.

2. I believe that Eagleton's issue here is one of semantics. They don't like the phraseology of this sentence. However, the sentence is true and is demonstrated by the sentence in paragraph 2 of the statement that they reviewed and to which they provided comments. That paragraph specifically contains the following information: "Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates(FN2) and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.(FN3)" Eagleton made two sets of comments to Footnote 2, which is imbedded in the sentence that was just quoted. They explained their methodology in those comments and that methodology was captured in footnote 2. That footnote specifically contains the following sentences: "These data did not differentiate between citizens and non-citizens;... Thus, 2004 estimates of voting age population include person who are not registered to vote."

3. Eagleton objects to the use of the word "so" in the second sentence. They believe that this creates an inference that they only used the second set of data because the first did not show significant correlations. While generally speaking, I believe that this inference is at least partially true, since researchers are always searching for a set of data that will show a statistically significant correlation and will proceed to a different set of data if the first does not show it, it is not the intended inference of these two sentences. The point is to show that of the two data sets that they used one showed no significant correlation and the second showed some correlations (however not all variables showed correlation). And, that the second set of data -- the one that showed correlation was questionable because of the unusually high turnout rate that was reported. As such, we have agreed to remove the words "so" at the beginning of the second sentence and "only" in the middle of the second sentence -- see #9).

4. There is no number 4.

5. I believe that the statement as contained in the EAC statement is TRUE. Stating one's name is not an independently verifiable form of identification, and I think those are the forms of identification that we are talking about. I can walk into any polling place in the country and state the name of any person. Unless the poll worker knows me or knows the person whose name I have used, there is no way to independently verify whether my statement is true. Conversely, my signature can be compared, my address can be verified, or my driver's license can be scrutinized to determine if I am the person that I purport to be. While it is true that I identify myself on the phone or in person all the time by stating my name, it is not for the purpose of determining my eligibility to vote in a particular precinct, etc. I believe that when the term identification is used in the context of voting that it must mean that the voter provides some independently verifiable form of identification. Having said this, I understand that this may be a point of disagreement for

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others. But, as for me, this statement is true.

6. Based on conversations with Karen concerning the two groups-- one assembled by Eagleton and one assembled by EAC -- both "questioned" the methodology and statistical analysis employed by Eagleton. The group assembled by Eagleton was referred to by them in their report as their "peer review group." Karen feels that "working group" is not an accurate description of the group assembled by EAC, so she has language to use to replace "independent working group" that captures the essence of that group.

7. See response to #2, above.

8. See response to #1, above.

9. See response to #3, above.

10. See response to #6, above.

11. I believe that the Commission must act on this report. Merely stating what we will do in the future will not distance us from this work and will result in media and others quoting Eagleton's work as an "EAC" report. It has been my understanding that the consensus of the group is to "decline to adopt." I believe that this is the right action.

My flight departs at 9:20 a.m. (EDT) and I do not arrive until 12:15 p.m. (EDT). However, if you have questions concerning my comments, I will be around tonight and will be available tomorrow afternoon by Blackberry.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

030571



## EAGLETON INSTITUTE OF POLITICS

To: Tom Wilkey

From: John Weingart, Eagleton Institute of Politics

Date: March 28, 2007

Re: Comments on March 26, 2007 draft EAC memo regarding the Eagleton-Moritz Voter Identification Report

Tom:

Thanks for your request yesterday that we provide comments on this draft memo. I also appreciate your plan to let us review your press release in draft when it is available. ?

Yes

In brief, we find the memo to contain inaccuracies and to incorporate a hostile tone that seems to criticize us for performing the study and analysis you hired us to prepare. Moreover, you suggest the need for further study as if it is a criticism of our work when, in fact, it is our report that recommends such additional work. I hope you are able to incorporate the following considerations in a revised edition before you distribute it further:

1. *"The contractor used a single election's statistics to conduct this analysis."*

That is correct. But we only focused on 2004 because a number of states changed their identification requirements from 2000 to 2004.

2. *"The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote."*

The assertion about eligibility is simply incorrect. We gathered this voting data by county and did not rely entirely on the Census Bureau. The aggregate data relied on an estimate of citizens of voting age for each county in 2004. The formula we used to estimate citizens of voting age came from the EAC's own Election Day Study. While some of the citizens of voting age population may not have voted, the individuals in the estimate were considered to be citizens and therefore were eligible to vote. The individual data from the Current Population Survey were limited to respondents who said they were citizens and registered to vote. Therefore they were eligible to vote.

3. *"The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout."*

As we showed in Appendix C to the Voter Identification Report, the analysis of the aggregate data revealed that non-photo identification and signature match requirements were negatively related to turnout when compared with states that simply required voters to state their name. This

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**RUTGERS**

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Web: [www.eagleton.rutgers.edu](http://www.eagleton.rutgers.edu)

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effect did not vary by racial or ethnic groups. The use of the word "so" at the start of the second sentence suggests that we moved on to the individual-level data because we found no clear correlation in the aggregate data. That is a false inference. It was our work plan all along to analyze both aggregate and individual-level data to provide the most complete analysis possible. The higher turnout rate in the CPS data is easy to explain. Turnout in this case is the percentage of registered voters who said they voted. National turnout data is typically calculated according to the percentage of citizens of voting age who turn out (not taking into account registration status). The smaller denominator in the CPS turnout calculation contributes to the higher percentage. Your draft memo does not take that into account. We said as much in footnote 13 in Appendix C to the Voter Identification Report: "The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted."

5. *"Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as 'state your name.' "* To say that being asked to "state your name" is to "require no identification at all" is simply wrong. To give one's name is to identify oneself. We relied on this category to make comparisons to the other, more stringent, requirements.

6. *"The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians."*

The term "questioned" in this context appears to be synonymous with the terms "challenged" or "doubted." The peer review group certainly raised important questions, but we believe we addressed all of the questions to the group's satisfaction. It is not clear to what you refer when you allude to an "independent working group." If another review group was involved, we were never given the opportunity to respond to its questions.

7. *Background: Contractor used two sets of data to estimate turnout rates...*  
Correct as noted in #2 above.

8. *Page 2: The Contractor used a single election's statistics to conduct this analysis.*  
This was essentially what you asked us to do. If the Commission feels in retrospect that it erred in shaping the contract and wants to acknowledge that, you should do so.

9. *Page 2: was conducted that produced only some evidence of correlation between voter identification and turnout*  
The phrase "only some correlation" is a most unusual one. That we showed "some correlation" is a significant finding yet the sentence as written appears to dismiss or even ridicule it.

10. *...were questioned by independent working and peer review groups...*  
Sec #6 above.

Comments on Draft EAC Memo

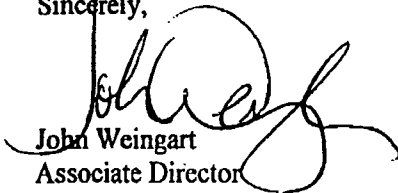
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*11. Recommendations (1) EAC should... decline to adopt the draft report provided by Eagleton.* While the recommendations are, of course, the Commission's call, we believe the report provides information that could be very useful to states now considering making changes to their voter identification protocols and requirements. Accordingly, we believe the Commission would be providing a service by adopting and actively distributing the report.

We recognize that voter identification is a controversial subject that has become much more politicized in the years since the EAC awarded this contract and even in the many months since we submitted this report to you. We also recognize that it is a complex subject to analyze. Nevertheless, we believe, to be both accurate and fair, this memo requires the significant changes I have listed above.

If you would like to discuss this, please don't hesitate to call me at my office at (732) 932-9384 x290. Thanks.

Sincerely,



John Weingart  
Associate Director  
Eagleton Institute of Politics

030574



"John Weingart"  
<john.weingart@rutgers.edu>

03/20/2007 02:44 PM

To klynndyson@eac.gov

cc jhodgkins@eac.gov, tom\_oneill@verizon.net,  
twilkey@eac.gov, "Tim Vercellotti"  
<tim.vercellotti@rutgers.edu>

bcc

Subject Re: Review of Voter ID Statement

History: This message has been replied to.

Karen:

The estimate of citizens of voting-age population controls for the percentage of the voting-age population that might have been non-citizens in 2004. We calculated the citizens of voting-age population using the following approach (this is a direct quote from Appendix C to our final Voter Identification report to the EAC):

"In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000."

I hope this addresses the issue. If it doesn't, let us know and Tim Vercellotti or I will be happy to elaborate.

Thanks,

John

lynndyson@eac.gov wrote:

- >
- > Quick question related to The Voting Age Population estimates used to
- > estimate/calculate turnout rates (see footnote 2 in the statement)-
- >
- > When taking into account noncitizens in the calculation were the
- > noncitizens considered as part of the VAP or as the population as a
- > whole?
- >
- >
- > Thanks for clarifying this for me.
- >
- > Regards-
- >
- >



"John Weingart"  
<john.weingart@rutgers.edu>

03/15/2007 10:38 AM

To klynndyson@eac.gov

cc

bcc

Subject Re: EAC Statement on its future study of Voter ID requirements

Karen - Sorry I missed your call. Just back from vacation but will be touching base with Tom, Tim et al today and will be back to you by tomorrow. Thanks.

dyouklynndyson@eac.gov wrote:

>  
> John and Tom-  
>  
> EAC staff are putting the finishing touches on the statement and data  
> it will be releasing, in the next several days, related to voter  
> identification study.  
>  
> In our brief statement we will be summarizing what Rutgers/Eagleton  
> did when performing its statistical analysis.  
>  
> \*Could you review the following statement for accuracy and send me any  
> revisions and edits to it by Friday March 16, 2007?\*

>  
> " The Contractor performed a statistical analysis of the relationship  
> of various requirements for voter identification to voter turnout in  
> the 2004 election. The Contractor compared states with similar voter  
> identification requirements and drew conclusions based on comparing  
> turnout rates among states for one election- November 2004. For  
> example, the turnout rate in 2004 in states with a photo  
> identification requirement was compared to the turnout rate in 2004 in  
> states with a requirement that voters sign his or her name in order to  
> receive a ballot. The Contractor used two sets of data to estimate  
> turnout rates: 1) voting age population estimates 1 and 2)  
> individual-level survey data from the November 2004 Current Population  
> Survey conducted by the U.S. Census Bureau2 "

>  
> Footnotes:  
>  
> 1 The July 2004 estimates for voting age population were provided by  
> the U.S. Census Bureau. Because these numbers include non-citizens,  
> the Contractor reduced the numbers by the same percentage the U.S.  
> Census Bureau estimated were non-citizens in 2000. Estimates of  
> voting age population includes persons who are not registered to vote.  
>  
> 2. The Current Population Survey is based on reports from  
> self-described registered voters who also describe themselves as U.S  
> citizens.  
>  
>  
>  
> \*Thanks for your feedback\*  
>  
> Regards  
>  
>  
> Karen Lynn-Dyson

030578





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## EAGLETON INSTITUTE OF POLITICS

---

April 19, 2007

Donetta Davidson, Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, D.C. 20005

Dear Chair Davidson:

I am attaching a copy of a memo I am sending to Adam Abroggi, Counsel for the Senate Committee on Rules and Administration, responding to his request for information about the Eagleton Institute of Politics' contract with the EAC. If you or your staff notice any errors or significant omissions in my summary of our work and coordination with you, please let me know. Also, please don't hesitate to contact us if there are any other ways in which we can help you to advance informed public consideration of provisional voting, voter identification and the other important issues within your purview.

Sincerely,

John Weingart  
Associate Director

Cc: Tom Wilkey, Executive Director  
U.S. EAC

---

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: (732) 932-9384 ext. 290  
Fax: (732) 932-6778

THE STATE UNIVERSITY OF NEW JERSEY  
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Web: [www.eagleton.rutgers.edu](http://www.eagleton.rutgers.edu)

030570

from: John Weingart, Associate Director  
Eagleton Institute of Politics

April 19, 2007

Adam

In response to your April 10<sup>th</sup> request, I have pulled together some information about the Eagleton Institute of Politics' contract with the U.S. Election Assistance Commission. Although I did not have a chance to do the thorough review, including comparing notes with all the members of our research team, that would be necessary to compile a full chronology of our work, I hope the following will be useful to you. I will be giving a copy of this memo to EAC Chair Donetta Davidson and Executive Director Tom Wilkey for any assistance it may offer them in responding to Senators Feinstein and Durbin's April 12<sup>th</sup> letter.

By way of background, Rutgers University's Eagleton Institute of Politics submitted a proposal to the EAC on March 25, 2005 to provide "research assistance to the Election Assistance Commission for the development of voluntary guidance on provisional voting and voter identification procedures." The proposal was submitted after extensive discussions with EAC Commissioners and staff that had begun on Election Day, 2004 when Eagleton had received a phone call from the EAC's then-Executive Director asking if the Institute would be interested in undertaking this work.

The proposal was prepared and submitted in partnership with the Moritz College of Law at Ohio State University. At the EAC's request, we proposed to handle the two research topics in sequence, first submitting a report on Provisional Voting and then preparing and submitting the report on Voter Identification. In describing the Voter Identification portion of the study, the proposal stated:

"We propose to test the hypothesis that more stringent voter ID requirements depress voter participation in general or for the poor, minorities and older voters in particular."

The proposal also included a plan to form a peer review group composed of scholars and practitioners in the areas of elections and voting to examine and comment on the research

The following pages provide a preliminary summary of our major contacts with the EAC during the course of the contract, with a focus on our work on Voter Identification. More extensive review of our files, including the monthly progress reports we submitted to the EAC, may find other relevant discussions, but this list at a minimum should provide a good overview.

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Web: [www.eagleton.rutgers.edu](http://www.eagleton.rutgers.edu)

030578



**EAGLETON INSTITUTE OF POLITICS**

To: Adam Ambrogi, Counsel

---

**May 25, 2005** - Contract awarded

**May 26, 2005** - First meeting of Eagleton-Moritz team with EAC Commissioners and staff in Washington. After general discussion of EAC interest in both topics, Commissioner DiGregorio expresses concern that the composition of the project's peer review group was politically unbalanced. Eagleton had proposed including the following five individuals: R. Michael Alvarez, Professor of Political Science at California Institute of Technology; Martha E. Kropf, Assistant Professor of Political Science at the University of Missouri-Kansas City; Daniel H. Lowenstein, Professor of Law at UCLA; Tim Storey, Program Principal at the National Conference of State Legislatures; and Peter G. Verniero, former New Jersey Attorney General and Supreme Court Justice and current Counsel to Sills, Cummins, Epstein and Gross.

Commissioner DiGregorio subsequently suggests other names for our consideration. We are impressed by the list of people he provides and add three of them to the Peer Review Group: John C. Harrison, Professor of Law at the University of Virginia; Timothy G. O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University; and Bradley Smith, Professor of Law at Capital University Law School. The Project Peer Review Group then had eight participants.

**July 28, 2005** - Brief EAC Commissioners at a public meeting at Cal Tech on progress on the research. Briefing includes this status report on the Voter ID phase of the work: "statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters will be complete in late August."

**August 9, 2005** - First telephone conference with Peer Review Group. Focus is draft Provisional Voting report.

**September 6, 2005** - Meet with the EAC in Washington. Brief the Commission on the status of the research on provisional voting.

**September 21, 2005** - Second telephone meeting of Project Peer Review Group.

**September 30, 2005** - Conference call with EAC Commissioner Martinez and three members of the staff. Commissioner Martinez indicates EAC is generally more comfortable playing the role of a national clearinghouse and therefore prefers to issue reports as "Best Practices" than as "Provisional Guidance." Staff says Eagleton emphasis should be on what states should do as opposed to suggesting how they would do it. Commissioner Martinez concludes meeting saying, "We have been very well served by all the work you and Moritz have done."

Feb. 22, 2006 - Conference call with Project Peer Review Group members after they have reviewed first draft of Voter Identification report. The Peer Reviewers suggest the statistical analysis: (1) Look at whether voter identification requirements are related to voter registration rates, as well as turnout; (2) Describe in further detail the basis for the aggregate and individual-level data analyses; (3) Clarify whether the report is examining turnout among citizens eligible to vote, or all individuals of voting age; (4) Stress in a footnote that Hispanics in the individual-level analysis are Hispanics who describe themselves as citizens who are eligible to vote; (5) Discuss in the Appendix the reasons why turnout rates appear to be higher in the Current Population Survey data than in other sources of data; and (6) Use predicted probabilities as opposed to odds ratios to describe the relationship between voter identification requirements and turnout.

*Eagleton subsequently revises draft of the statistical analysis to address all these issues.*

March 28, 2006 - Conference call with EAC staff and Eagleton-Moritz research team in advance of team's scheduled briefings of EAC Commissioners in Washington, D.C. on Provisional Voting and Voter Identification reports.

April 3, 2006 - Eagleton-Moritz morning meeting in Washington with EAC Commissioners Davidson and Hillman and staff members. Series of questions and responses on Voter ID methodology.

Commissioners ask whether respondents to the Current Population Survey might be non-citizens who said they were registered and voted. In a subsequent follow-up e-mail, Tim Vercellotti of Eagleton writes that the design of the CPS questionnaire skips non-citizens past questions about registration and voting. Commissioner Davidson asks if the team could examine the relationship between identification requirements and turnout over time. Team members respond that the information on state identification requirements for previous election cycles would require additional extensive research. Commissioner Hillman asks if the report could break out the relationship between voter identification and turnout for African-Americans with education levels of a high school diploma or less, or African-Americans below the poverty line.

*Subsequent analyses examined these subgroups as suggested.*

Eagleton-Moritz afternoon meeting with Commissioners DiGregorio and Martinez and EAC staff. Series of questions and answers. Commissioner DiGregorio concludes he is "disappointed" with the report. Commissioner Martinez says he "appreciates" it.

April 13, 2006 - Conference call between Eagleton and EAC staff. EAC requests that Eagleton convene a conference call of the Project Peer Review Group with EAC staff and/or Commissioners to discuss the statistical analysis of the effects of various Voter Identification requirements on turnout.

EAC staff also reports that the EAC is going to convene its own second peer review group to seek feedback on review by the Project Peer Review Group.

**(April 13, 2006 continued)**

EAC staff also reports that Eagleton is on the preliminary schedule to present Voter ID findings to the EAC's Advisory Board May meeting but that the date and location have not yet been set. EAC staff say they are "unsure where Voter ID project is going. We're going to have to see. We saw lines really drawn politically over Voter ID piece. We'll have to see what statements the agency chooses to make over this topic. It is the topic - It has nothing to do with you. The timing is such that Voter ID is a hot topic."

**April 28, 2006** -Eagleton informs EAC by email of its understanding of status of Voter ID project: "We presented our Voter ID research to the commissioners in April and are now revising it in line with their comments; that revised research paper will be discussed in mid-May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24; ...The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June..."

**May 1, 2006** - EAC informs Eagleton that it is on the schedule to brief EAC Advisory Boards on both Provisional Voting and Voter ID on May 23 and 24, but asks that we plan on making four separate presentations to the boards over the two days.

**May 11, 2006** - Conference call on Voter Identification draft with some of original Project Peer Review group, second group of peer reviewers assembled by EAC, and EAC staff. Second group includes the three individuals noted in entry above for May 26, 2005.

One of new reviewers says that using a five-category ordinal variable in the statistical models to characterize the five types of voter identification requirements might rest on unrealistic assumptions. He recommends using five dichotomous variables, also known as dummy variables, for the requirements instead. He also recommends using predicted probabilities to assess the relationship between identification requirements and turnout in the individual-level data. Two of the original Project Peer Review Group recommend including analyses using the ordinal-level variables in the appendix for comparative purposes.

*Subsequent drafts incorporate all these suggestions.*

Two of new reviewers also recommend that the models assume age has a curvilinear effect on turnout, with turnout rising, then falling, as voters age. They recommend using both age and age-squared in the models, or age broken down into dummy variables.

*Subsequent drafts use a series of dummy variables to capture the curvilinear relationship between age and turnout.*

**(May 11, 2006 continued)**

One of original peer reviewers recommends further explanation clarifying that the turnout rates for the states using aggregate data make clear the rates for each state reflect an average of the turnout across the counties in the state. Same reviewer also recommends expanding the discussion of maximum and minimum requirements to add more detail about the distinctions between the two types of requirements.

*Subsequent drafts of the statistical analysis incorporate all these changes.*

One of new reviewers expresses concern about the omission of two important contextual predictors of turnout - the number of days between the close of registration and Election Day, and a measure of which states have Election Day registration.

*Subsequent analyses examine the effects of these variables on aggregate turnout.*

New reviewer also recommends breaking out Asian-American voters when looking at the relationship between voter identification and turnout.

*Subsequent drafts incorporate this suggestion by including Asian-Americans in the individual-level analyses.*

**May 23-24, 2006** - Research team briefs EAC Standards Board and EAC Board of Advisers in Washington, D.C. regarding the Provisional Voting report. The Voter Identification report, originally on the agenda, is dropped before the meeting.

**June 6 (?), 2006** - Letter from Project Director Tom O'Neill to Commissioner Paul DiGregorio responding to the Commission's hesitancy to publish best practices recommendation on Provisional Voting and questions on how to handle research on Voter ID. Excerpt from letter: "We hope the commission will use the reports, as intended from the outset of this project, as the basis for recommendations for better, if not best, practices to the states. If the Commission cannot decide to issue such recommendations to the states, we hope it will release the reports to provide the states and the broader elections community with this information, analysis and perspective on the issues. We recognize, based on the reactions at the Standards Board and, particularly, the Board of Advisors, that some of the findings, conclusions, and recommendations of the reports will be controversial with some of the Commission's constituencies. But we also believe, based on the comments of the Peer Review Group, the advisors assembled by the Commission, and our response to their critiques, that the reports are grounded in solid research by a well-qualified, nonpartisan team and that the reports will provide new information for the policy process. We believe this information will contribute to achieving the EAC mission of providing helpful information that the states may or may not choose to implement. . . . We believe our reports will prove useful to the states as they complete preparations for the 2006 elections."

**June 15, 2006** - EAC Executive Director writes to Eagleton saying "...The EAC Commissioners have reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final draft report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

**June 29, 2006** - Eagleton-Moritz submits to the EAC its final reports on Provisional Voting and on Voter Identification referring to Voter ID paper as "final draft" at EAC request. First of five major recommendations on Voter ID from Eagleton-Moritz is:

The EAC should "encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted."

**August 16, 2006** - Eagleton writes to request that the EAC make "the two reports available for use by researchers, legislators, election officials and others interested in these topics." Letter notes: "That the EAC originally commissioned these studies to offer lessons for the 2006 elections based on experience in 2004 further supports the importance of quick action."

**August 31, 2006** - EAC Executive Director responds: "You may not release the draft report [on Voter ID]...as this report has not been finalized and has not been officially released by the EAC."

**February 8, 2007** - Eagleton presents voter identification findings to public meeting of the EAC in Washington. Transcript of the public meeting is available on the EAC web site.

**October 17, 2006** - EAC Executive Director responds to request from Brennan Center for Justice at NYU Law School sending "draft report on provisional voting, prepared by the Eagleton Institute of Politics and the Moritz College of Law." Letter notes, "EAC personnel are in the process of drafting a report about voter identification. The report will be made available upon completion."

**October 27, 2006** - Eagleton writes to EAC Executive Director saying, "We are...disappointed that you are not ready to do the same [release] our report on Voter Identification. We would appreciate knowing approximately when you expect to complete the review and consideration of advisory board concerns you mention to Ms. Weiser" [of the Brennan Center]

**March 30, 2007** - EAC posts Voter Identification paper on its web site and issues statement concluding of the report that "The Commission and our contractor agree that the research conducted for EAC raises more questions than provides answers."



Edgardo Cortes /EAC/GOV

10/25/2006 03:20 PM

To Margaret Sims/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie

bcc

Subject Re: Question-Voting Fraud-Voter Intimidation Report 

Gavin asked me about this issue yesterday and I also suggested a meeting/call between all of us to discuss this so there is no confusion about where things are. Obviously tomorrow is out, but does everyone want to have a call on Friday about this? Let me know what times everyone is available and I can reserve the small conference room. Thanks.

Edgardo Cortés

Election Research Specialist

U.S. Election Assistance Commission

1225 New York Ave. NW, Ste. 1100

Washington, DC 20005

866-747-1471 toll free

202-566-3126 direct

202-566-3127 fax

ecortes@eac.gov

Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

10/25/2006 11:59 AM

To Thomas R. Wilkey/EAC/GOV@EAC

cc ecortes@eac.gov

Subject Re: Question-Voting Fraud-Voter Intimidation Report 

Tom:

I sent the consolidated draft of the report last week (minus the Nexis and case law charts) to the lawyers (with a cc: to you), along with the following comments:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.
- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper segues. I don't know if we should leave it as is, or insert them where needed.

03058E

The only comments I've received so far were from Gavin, who said, "I would put forth one point at the outset... if we are creating an EAC report, let create an EAC report. Tova and Job contract employees... I do not see why we can't use all, some or none of their work without footnote or comment."

The series of supporting charts can be found in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Report\Consolidated Copy in the subfolders marked Case Charts and Nexis Charts. I continue to work on the formatting of these charts, but at least you and Edgardo can access them. (I would have attached copies to this message, but it would involve too many files.)

We may want to schedule a teleconference on this with the attorneys and Jeannie.

I hope you are feeling better. --- Peggy

Thomas R. Wilkey/EAC/GOV

10/25/2006 10:46 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Question

Hi Peggy;

Sorry I missed you yesterday when you were here and hope you are beginning to feel better.

As you know the Voter Fraud and Intimidation Report is causing quite a stir.

Can you give me some ball park timeframe for how long it may take to wrap up our review and get a report to the Commissioners

Is there anything I can do to assist with getting you some help on this.

I know you have other things on your mind but I need to find a way to wrap this up soon.

Also I believe that there were some charts of some sort that were not included in the report we got from Tova and Job, are they available for Edgardo to find so that I may take a look at this.

Thanks so much and hope things are getting better for you.

Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100

030586

Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

030587



Paul DeGregorio /EAC/GOV  
10/23/2006 10:15 PM

To Gracia Hillman/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC  
bcc

Subject Re: The Fraud "Report" 

History:  This message has been replied to

I think it's good idea, especially considering the media coverage and controversy. I spoke with Todd Rokita today and he was not happy at all about what he has read and feels the status report was misleading as the working group session held the day after the report was given came to different conclusions.

We also should make mention on Thursday about the 4th anniversary of HAVA, which is this Friday. It could give us an opportunity to talk about the positive things that have happened in election reform since its passage. Much of the talking points our media advisors drafted talk about this.

-----  
Sent from my BlackBerry Wireless Handheld  
Gracia Hillman  
--- Original Message -----

**From:** Gracia Hillman  
**Sent:** 10/23/2006 09:13 PM  
**To:** Paul DeGregorio; Thomas Wilkey; Donetta Davidson  
**Cc:** Juliet Hodgkins; Jeannie Layson  
**Subject:** The Fraud "Report"

I am recommending that we use Thursday's meeting, a public forum, to be on the record about this report.

My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

Please let me know what you think about this suggestion. Thanks.

-----  
Sent from my BlackBerry Wireless Handheld

030588



Gracia Hillman /EAC/GOV

10/23/2006 09:13 PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, "Donetta Davidson" <Ddavidson@eac.gov>

cc Juliet E. Thompson/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>

bcc

Subject The Fraud "Report"

I am recommending that we use Thursday's meeting, a public forum, to be on the record about this report.

My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

Please let me know what you think about this suggestion. Thanks.

-----  
Sent from my BlackBerry Wireless Handheld

030599

Margaret Sims /EAC/GOV  
10/23/2006 05:39 PM

To Jeannie Layson/EAC/GOV@EAC  
cc bwhitener@eac.gov  
bcc  
Subject Request for Voting Fraud Status Report

I've received a request for the Voting Fraud project status report from a local election official. Are you and Bryan fielding all inquiries for copies of the report, or just the press inquiries? --- Peggy

030590

**Jeannie Layson /EAC/GOV**

10/23/2006 04:57 PM

To ghillman@eac.gov

cc sbanks@eac.gov

bcc

Subject Interview w/Hazel Edney

Commissioner,

Hazel asked for a copy of the draft fraud report. I explained to her that staff was currently working to complete a final report, and I sent her the status report. However, she said she may not be interested in interviewing you if we cannot provide the draft report. She is going to touch base with me tomorrow, and I will let you know what she says.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

03059\*

Jeannie Layson /EAC/GOV  
10/23/2006 11:49 AM

To twilkey@eac.gov  
cc bwhitener@eac.gov, jwilson@eac.gov  
bcc

Subject Fw: EAC Commissioned Report on Voter Fraud

tom,  
who should get these emails? There's a petition out there, asking us to release the fraud report, so someone needs to be the point person on these.

— Forwarded by Jeannie Layson/EAC/GOV on 10/23/2006 11:47 AM —

Joyce Wilson /EAC/GOV  
10/23/2006 11:47 AM

To Jeannie Layson/EAC/GOV@EAC  
cc

Subject Fw: EAC Commissioned Report on Voter Fraud



Jeannie, Please respond, if appropriate or forward to proper person. If not you, please let me know the person that would handle responding to such inquiries. Thanks!

Joyce H. Wilson  
Staff Assistant  
US Election Assistance Commission  
202-566-3100 (office)  
202-566-3128 (fax)

— Forwarded by Joyce Wilson/EAC/GOV on 10/23/2006 11:44 AM —



"Mike Marsolek "  
<marsolek@gmail.com>  
10/20/2006 04:58 PM

To HAVAINfo@eac.gov  
cc

Subject EAC Commissioned Report on Voter Fraud

Honorable EAC Commissioners,

I ask you to release the EAC commissioned report on voting fraud. Regardless of political persuasion, voting is the bedrock upon which our representative democracy is built. Because of this your responsibilities are great. Currently there has been a rush of litigation intended to protect against voter fraud. There are real concerns that these protections will decrease voter turnout, and likely decrease turnout disproportionately in minority groups. This will obviously affect the parties differently, thereby creating a tense environment and adding to the strife in our society today. It is important, you can not disagree, that any laws regulating voting practices are only created and passed with honorable intentions, since if the voting process itself is compromised the whole of our representative democracy is as well.

I respect you are in difficult circumstances, but it is better for the country to know the results of

030590



an objective report than to be litigated under subjective pretenses and in a disenfranchising manner. All people in this country who are citizens deserve to vote, and this report can help ensure that they continue to have that right free of trappings whose intentions are not true. Thank you for your work and time.

Sincerely,  
Dr. Michael D. Marsolek

3261 Franklin Ave. E, #8  
Seattle, WA 98102



"Judith Schaeffer "  
<jschaeffer@pfaw.org>  
10/19/2006 10:48 AM

To bwhitener@eac.gov  
cc jlayson@eac.gov  
bcc  
Subject Report re voter fraud

Dear Mr. Whitener:

Thank you for taking the time to speak with me this morning. As you know, I was calling to request a copy of the complete report regarding voter fraud written by Tova Wang and Job Serebov. I am sending this in accordance with your request that I email our request for a copy of that report to you and that I "cc" Ms. Layson on the email.

I'd very much appreciate obtaining a copy of this report today. In the event that you can send it electronically or fax it, my contact information is below. If not, please let me know when and where I may pick it up

Thank you for your assistance.

Sincerely,

Judith E. Schaeffer  
Deputy Legal Director  
People For the American Way Foundation  
jschaeffer@pfaw.org  
202-467-2381 (ph.)  
202-293-2672 (fax)

030594



Gracia Hillman/EAC/GOV

10/17/2006 01:12 PM

To Jeannie Layson/EAC/GOV@EAC

cc "Sheila Banks" <sbanks@eac.gov>

bcc

Subject Re: NEED APPROVAL: Brennen Cen. letter 

The letter looks fine to me.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson

**Sent:** 10/17/2006 10:06 AM

**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson

**Cc:** Thomas Wilkey; Margaret Sims; Karen Lynn-Dyson; Juliet Hodgkins; Gavin Gilmour; Bryan Whitener

**Subject:** NEED APPROVAL: Brennen Cen. letter

Commissioners,


I have not received input from everyone regarding the attached letter. It is a response to Wendy Weiser of the Brennan Center, who requested the staff voter fraud status report and the provisional voting draft report, both of which were presented to the Standards Bd. and the Bd. of Adv. at the May meeting. She also requested the draft voter ID report, which was not released at the May meeting. If possible, I'd like to get your input by the end of the day. The letter would go out under Tom's signature. Thank you.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030595



Paul DeGregorio /EAC/GOV  
10/17/2006 10:14 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: NEED APPROVAL: Brennen Cen. letter 

The letter is fine with me.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 10/17/2006 10:06 AM  
**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson  
**Cc:** Thomas Wilkey; Margaret Sims; Karen Lynn-Dyson; Juliet Hodgkins; Gavin Gilmour; Bryan Whitener  
**Subject:** NEED APPROVAL: Brennen Cen. letter

Commissioners,

I have not received input from everyone regarding the attached letter. It is a response to Wendy Weiser of the Brennan Center, who requested the staff voter fraud status report and the provisional voting draft report, both of which were presented to the Standards Bd. and the Bd. of Adv. at the May meeting. She also requested the draft voter ID report, which was not released at the May meeting. If possible, I'd like to get your input by the end of the day. The letter would go out under Tom's signature. Thank you.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

030596

October 17, 2006

Ms. Wendy R. Weiser  
Deputy Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
161 Avenue of the Americas, 12th Floor  
New York, NY 10013

Dear Ms. Wieser:

Thank you for your request for information regarding U.S. Election Assistance Commission (EAC) research projects on voter fraud and voter intimidation, provisional ballots and voter identification.

The status report on voter fraud and voter intimidation, prepared by EAC staff, and the draft report on provisional voting, prepared by the Eagleton Institute of Politics and the Moritz College of Law, are enclosed. EAC personnel are in the process of drafting a report about voter identification. The report will be made available upon completion.

Status documents about voter fraud and voter intimidation and provisional voting were presented to the EAC's Standards Board and Board of Advisors at a public meeting held in May 2006. Neither of these documents were final EAC reports. Per the Help America Vote Act (HAVA), the EAC works with its advisory boards to gather input on activities, including research projects. After discussing the provisional voting research with our advisory boards, they requested further research and clarification and noted that some of information was inaccurate or incomplete. Please see the attached resolutions passed by both entities outlining their concerns. As such, EAC is currently reviewing the draft report on provisional voting to address the concerns of the agency's advisory boards.

As a small agency of only 23 employees, including four commissioners, it is necessary for EAC to contract with third parties and experts to conduct research. The information provided by third parties is used by staff to develop EAC final policy or reports. No documents, drafts or third party recommendations submitted to EAC constitute official EAC policy or opinion and should not be identified or referred to as such.

Please note that our Standards Board and Advisory Board meetings are open to the public and are publicized on the EAC website at [www.eac.gov](http://www.eac.gov) and posted in the Federal Register.

Thank you for your interest, and let us know if we can be of further assistance.

Sincerely,

Tom Wilkey  
Executive Director

030597

Margaret Sims /EAC/GOV  
10/13/2006 04:40 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov  
bcc  
Subject Fw: Don't Believe Everything You Read

Jeannie:

Attached is the email I sent to Tova and Job, and Job's response. (I have not yet heard back from Tova.)  
--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 10/13/2006 04:37 PM ---



"Job Serebrov"  
<serebrov@sbcglobal.net>  
10/13/2006 03:26 PM

To psims@eac.gov, wang@tcf.org  
cc  
Subject Re: Don't Believe Everything You Read

Peg:

We saw both the USA Today article and a similar thing was reported on Rush Limbaugh's show naming both of us. I had a talk this morning with folks at the EAC. I told them at this point there needs to be a press release sent out by the Chairman saying just what you stated. This is the only way to rehabilitate the work we did, the Chairman's credibility, and our reputations. I also fear that if this is not done the EAC will begin to receive calls from Congressman and Senators regarding the "report" and its effect on voter ID requirements.

Peg, up to now Tova and I have refused to speak with the press at all out of respect for the EAC and its mission. We both stand by our work and its conclusions. We both also feel that if a statement (as well phrased as you did in this e-mail clarifying the issue) is not forthcoming from the Chairman then I will have to correct this error with the Press. I explained this in my conversation this morning with the EAC.

Tova and I worked hard to produce a correct, accurate and truthful report. I could care less that the results are not what the more conservative members of my Party wanted. Neither one of us was willing to conform results for political expediency. I think its important for me to note that I was very impressed with Tova's members of the Working Group and I can't say enough about Tova's partnership effort in this endeavor. While neither one of us really care about outside opinions, we do care that the Chairman was quoted or misquoted in a way that would disparage our year-long effort and all of the tax payer money that went into it. For this reason, we believe that a press release clarifying the situation is necessary from either the Chairman or from me.

Regards,

Job

03059E

*psims@eac.gov* wrote:

Tova and Job:

I am home recuperating, but see that in my absence, a USA Today article has gotten everyone stirred up. The report to which the article refers is only the status report on the voting fraud-voter intimidation research project that was delivered to our Standards Board and Board of Advisors last spring. I provided a copy of this document to both of you. but have attached another copy for your information. This document is subject to public release because it was presented at a public meeting.

Due to internal resource allocation problems, your final report has not yet been reviewed by the Commissioners. It is considered a working document (not subject to public release) until it has completed the review process and the Commissioners have agreed to release it. There has been no attempt by the Commission to hold up the report. I bear responsibility for any delays in moving it along. Please be reassured that we would not release your report without letting you know.

Peggy Sims  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: [psims@eac.gov](mailto:psims@eac.gov)

030593

**United States Election Assistance Commission – Board of Advisors Meeting**

**Meeting Minutes – April 27-28, 2005**

Herewith are the Minutes of the meeting of the United States Election Assistance Commission (EAC) Board Of Advisors held on Wednesday, April 27, through Thursday, April 28, 2005. The meeting convened on April 27 at 8:30 a.m. in Cambridge, Massachusetts at the Marriott Boston Cambridge Hotel, 2 Cambridge Center and adjourned at 12:41 p.m. on April 28, 2005.

**Call to Order:** Chair Lewis called the meeting to order at 8:30 a.m.

**Roll Call:** Chair Lewis called the roll and found present Secretary Chris Nelson, Ms. Mary Herrera, Secretary Mary Kiffmeyer, Secretary Rebecca Vigil-Giron, Mr. Tom Wilkey, Ms. Wendy Noren, Ms. Helen Purcell, Ms. Beverly Kaufman, Mr. David Orr, Mr. Tony Sirvello, Mr. J.R. Harding, Mr. Noel Hillman, Mr. Hans von Spakovsky, Ms. Polli Brunelli, Mr. Wesley Kliner, Mr. Thomas Shortbull, Mr. Joseph Crangle, Ms. Sue Sautermeister, and Secretary Robin Carnahan. Chair Lewis also recognized that Mr. Jim Dickson and Mr. Christopher Thomas were not present at roll call, but were scheduled to arrive later in the day.

**Changes in Agenda:** Chair Lewis asked that the Board not take any official votes until they adopted a set of bylaws in the following day's business session. He then announced that the EAC Commissioners' Q and A session would be moved to 8:30 AM the following day.

**Updates and Reports:** Chair Lewis asked each member to describe a few concerns they wished to address. The members raised concerns in an effort to improve the development process of the Voluntary Voting Systems Guidelines. (VVSG). Amongst the various concerns raised were members' desires to discuss and integrate public comment into the process; concerns regarding the states' lack of guidance in acquiring systems prior to the release of the final voting systems guidelines; the development of Board of Advisors bylaws; means to improve voter registration systems and reduce voter fraud; and various other obstacles facing EAC, State and local election officials in administering the mandates set forth in HAVA.

**EAC Update:** Thereafter, Chair Lewis introduced EAC EAC Chair Hillman, who provided the Board with an update on EAC. EAC EAC Chair Hillman gave a brief



summary of the challenges facing EAC, as well as milestones from the previous year, including its move in April 2004 to its new office space at 1225 New York Avenue, the publication of State plans, disbursements of requirements payments to States and issuance of best practices

payments being EAC EAC Chair Hillman went onto to discuss the schedule of

made to the states. She noted that Alaska, Guam and New York had not yet received any Title II payments because they had not met the administrative complaints procedures or five percent matching requirements, mandated by HAVA. Additionally, she noted the schedule of 2005 meetings and discussed EAC's intention to hold public hearings in the field.

EAC EAC Chair Hillman then reported on EAC's success in obtaining an

increase in its 2005 budget to \$10 million for its operating budget and \$4 million for research projects. These increases allowed EAC and the Technical Development Guidelines Committee (TGDC) to move forward with the National Institute of Science and Technology (NIST) on the development of the Voluntary Voting System Guidelines (VVSG). EAC EAC Chair Hillman indicated that of this \$14 million budget, approximately half is devoted including the development of guidance and VVSG. EAC's fiscal year 2006 budget request is approximately \$17 million.

Furthermore, EAC EAC Chair Hillman discussed the FY 2005 cap of 22 full-

time employees and EAC's efforts for FY 2006 to have that number increased to 26, so that EAC may properly take over lab accreditation, voting system certification and the ongoing review and auditing of all state reports. EAC has decided to contract out a lot of the work it could do internally if it had more staff. Chair Hillman then described how the budget request process works.

EAC EAC Chair Hillman then told the Board that the Commissioners would receive recommendations from the Technical Guidelines Development Committee (TGDC) by May 9th. Thereafter, the guidelines will be posted for public comment for 90 days, at the end of which, EAC will make changes to the VVSG as appropriate. During the comment period, EAC plans to hold 3 public hearings. The entire process should take approximately 120 days and is required by HAVA.

EAC EAC Chair Hillman provided a summary of the research and study projects EAC is working on, including issuing guidance on provisional voting, the impact of voter ID requirements, issuing statewide voter registration database guidance, studying and surveying Election Day 2004, UOCAVA, and NVRA as required under HAVA. The Election Day study will establish baseline information and statistics for further study and comparison. In addition, EAC will do a study on electronic voting and a report on Free Absentee Ballot Postage some time in the near future.

EAC EAC Chair Hillman stated that all EAC meetings, including those of the Board of Advisors and Standards Board, are open to the public. General Counsel Juliet Thompson stated that the Board would be able to have telephonic meetings concerning upcoming studies as long as they are published.

Mr. Noel Hillman stated his concern that EAC does not yet have an Inspector General to oversee the process of disbursing funds and offered his help in securing Inspector General services for EAC. EAC EAC Chair Hillman stated that the Commission has been working to establish a cooperative relationship with another agency for the use of Inspector General services and they are close to establishing such a relationship. Commissioner Soaries added that they are aware of the need to secure such services.

Commissioner Martinez commented on the interface between the Single State Audit Act and the duties of the Inspector General and stated that the Commissioners recently received guidance from GAO. In addition the Comptroller General has an obligation to audit funds at least once during the life of the funds.

Commissioner Martinez further commented that although the Commission reviewed the state plans that were submitted, its due diligence is limited to certification that a state had received a Title II payment, had filed a state plan published in the Federal Register, had an administrative complaint procedure in place, and had put up a 5 percent match. EAC will rely on the states to inform itself when it makes a material change to its plan, but will also perform audits to ensure that funds are being used for the intended purposes.

Chair Lewis expressed understanding that data collection at the local levels can sometimes be difficult, but stated that the first data collection instrument was thorough and served as a good benchmark.

Chair Lewis introduced Mr. Mike Sciortino, Chair of the Standards Board, who stated that the Board recently elected and organized an executive board. The executive board met in Washington, DC with members of the Advisory Board and National Academy of Sciences to develop a framework for the proposed guidance on Statewide Voter Registration Database List. Commissioner Martinez thanked Chair Sciortino for his leadership and guidance. Commissioner Martinez also indicated that the Standard Board's meetings would be transcribed and open to the public. Mr. Wilkey requested that the Voting Standards Subcommittee convene briefly during the break.

**Recess:** The meeting was recessed until 10:45 AM.

**Reconvene:** When the meeting reconvened, Chair Lewis stated that those wishing to propose changes to the bylaws should discuss proposals at 1:15 p.m. at the back of the room towards the end of the working lunch. He also indicated to the Board changes to the Board contact roster should be submitted to Sheila Banks at EAC, who contact information is on the last page of the roster of the Board of Advisors. Chair Lewis then asked Mr. Wilkey, Chair of the Board's Standards Committee, to provide an update on voting systems standards.

**Voting System Standards:** Mr. Wilkey stated that he would be available to review the TGDC's proposed Voluntary Voting System Guidelines over the next few days. He encouraged Board Members not to be intimidated by the technical data and to ask for help in understanding the guidelines when necessary. He described the voting standards process as open and transparent and expressed amazement at its progress. Mr. Wilkey then stated that the 1990 standards took five years to develop and that there was a gap of time during which election officials determined what changes should be made to the standards.

Under HAVA, the TGDC and NIST had to produce its product in nine months and Mr. Wilkey stated that it was a monumental effort. Mr. Wilkey suggested that members of his committee, members of the board who were on the TGDC and a parallel group from the standards board convene for a day to get a briefing on the document. Mr. Wilkey asked Ms. Thompson if the contents of that meeting would be displayed on the website or otherwise be made available for the two groups. Mr. von Spakovsky asked when the latest version would be available and Mr. Wilkey responded that it would probably be available in the middle of June and that it

would be available on the website. Mr. Wilkey then encouraged everyone to read the overview enclosed in the booklets as a start.

Chair Lewis suggested that the Board of Advisors work like a legislative body and listen to recommendations its committees make to it. Commissioner Martinez informed Mr. von Spakovsky that the Commission intends to transmit the initial set of recommendation to Board of Advisors members when they receive them.

Chair Lewis asked Commissioner Martinez if there was sufficient time for Mr. Wilkey's committee and TGDC members to get together during the 90-day period. Commissioner Martinez stated that there would be ample time and that HAVA requires a minimum period of 90 days for review but as the Chair suggested, that period may extend longer than 90 days if necessary to ensure due diligence. Secretary Kiffmeyer suggested that the Board try to give guidance as early in the process as possible. Commissioner DeGregorio then suggested to Chair Lewis to request that Board members who worked with NIST on the standards in the past discuss their experiences.

EAC EAC Chair Hillman stated that the EAC has encouraged Board Members to review information as it became available and has sent letters in advance of the dates documents would be posted so that they could plan accordingly. Mr. von Spakovsky indicated concern over when Board Members would be getting a draft of voting standards for comments and EAC EAC Chair Hillman stated that the Commissioners would take his suggestion under advisement that the Board get a draft when the Commissioners receive their draft.

Chair Lewis requested that Ms. Purcell and Mr. Harding comment on their experiences as members of TGDC. Ms. Purcell stated that the TGDC broke into three subcommittees and met by conference call every week or every other week. In addition the TGDC had several plenary sessions and planned to issue the recommended VVSG to the Commissioners by May 9, 2005. Ms. Purcell stated that she was on the Security and Transparency Subcommittee and worked on Voter Verified Paper Audit Trail (VVPAT). Ms. Purcell also brought attention to the fact that what has been accomplished by TDGC to date is on the NIST website.

Mr. Harding stated that the reason the TGDC broke into committees is because it was the only way to manage the work since the document is so large. The TGDC also informed the NIST

officials of election officials' limitations and practical needs and resources. Mr. Harding suggested that a process be developed so that Board members can ask prompt questions to narrow the focus of comments.

Ms. Noren encouraged everyone on the Advisory Board to read the documents on NIST's website and to digest the technical standards as part of their legal obligation. She also stated that the Advisory Board has a huge duty to assure that standards are in place for the 2006 election.

Ms. Purcell commented that most election officials have been using the same equipment for decades and that the goal is long-term. She also stated that she was impressed with how fast the NIST was able to assimilate election information and how much time they devoted to learning about elections.

Secretary Carnahan asked if Version 1 would be finalized on May 9, 2005 and if Version 2 would be available by December 31, 2005. Ms. Purcell responded that they were aiming to finalize Version 2 in November. Secretary Carnahan then asked if vendors that would be able to meet the new guidelines as required by state law.

Chair Lewis stated that it was a false expectation to have the standards coincide with the availability of new equipment in compliance with standards.

Mr. Dickson asked if the final point of the document would be May 9, 2005, or after the comment period and Chair Lewis responded that it would be after the comment period and publishing in the Federal Register. Chair Lewis also indicated that there could be changes between the May 9, 2005, version and what goes into the Federal Register. Mr. Dickson finally asked what the thinking was in terms of a one-time purchase and the existence of evolving standards. Mr. Harding responded that election officials would need to purchase equipment as well as maintenance agreements with their sums.

Secretary Vigil-Giron stated that her state (NM) was moving toward uniformity of all systems and looks forward to the enactment of standards as a positive evolution.

Mr. Orr expressed confusion about the difference between the reality of purchasing compliant systems and the reality of the legal obligation to purchase compliant systems. Chair Lewis responded

that the first legal basis is that machines bought in compliance with the 2002 standards are still operable. However, the reality is that some political groups will expect the standards to be adopted immediately. Chair Lewis understands the frustration that follows from such expectations, but it is the reality.

Commissioner Martinez reiterated a point Ms. Noren made, that each state has to look at its own state law to determine which guidelines to follow and what equipment will be in compliance. The Commissioner also indicated that guidelines on VVPAT were intended to be the first of several different ways to achieve independent verification. Guidelines on others would be addressed in future iterations of VVSG.

Secretary Nelson asked what impact Version 1 will have on ITA certification and Commissioner Martinez responded that the Commission will consider whether grandfathering is appropriate in that regard. The TGDC has indicated to the Commissioners that any policy on grandfathering should be decided by the EAC and not decided by the TGDC.

Secretary Kiffmeyer expressed her concern that the Board considers public perception and she complimented the Board on their discussion.

Mr. Dickson asked if putting the expectation of updates into a contract with vendors would result in their taking advantage of that reliance. Ms. Noren stated that there may be a holdup problem, but that with guidance from NIST and EAC, vendors should be able to offer more accurate pricing.

Mr. Kliner and Commissioner Martinez discussed how grandfathering standards could affect legislatures' ability to plan for implementing new guidelines. Commissioner Martinez discussed the possibility of issuing guidelines with an implementation date far enough in the future to allow states to effectuate the changes. Ms. Paquette cautioned that Volume 2, which is available on NIST's website, may not accurately represent the balance in security systems that EAC wishes to achieve.

**Recess and Reconvening:** The meeting recessed for lunch at 12:13 PM and reconvened at 1:34 PM.

**State Voter Registration Lists:** Commissioner Martinez informed that under sections

311 and 312 of HAVA, EAC is obligated to issue guidance on the implementation of the administrative requirements in Title III. This includes Voting System Standards under Sections 301-303.

Commissioner Martinez indicated that EAC convened a working group to recommend draft guidelines on Statewide Voter Registration Lists. Among the members who participated were Secretary Nelson, Secretary Vigil-Giron, Ms. Sautermeister, Ms. Noren and Mr. von Spakovsky.

Commissioner Martinez noted that tab 7 in the Board's briefing book contains the draft guideline, which was published in the Federal Register on April 18, 2005.

EAC EAC Chair Hillman stated that in conversations with Members of Congress, she has suggested that they reserve judgment about how and when HAVA dollars are spent until critical deadlines have been met by the States. Although states have an idea of the cost of replacing voting systems, many are finding that it will be much more expensive to develop, implement or update the voter registration. They may therefore have to amend their HAVA spending plans.

Secretary Kiffmeyer stated that it was not explicit in the language in the draft guidance that the state list be the official list. She also expressed concern about the definition of the word "expedited." Commissioner Martinez responded that the working group gave much attention to the language in Section 303(a)(1)(VI). As an example, Colorado elected to use a real-time transfer to comply with the expedited basis language in the statute. However, other states may interpret "expedited" differently. California currently plans that its statewide system will pull information from local databases, which will not happen instantaneously. The working group agreed that the term expedited should mean at least once every 24 hours.

Secretary Kiffmeyer stated that her question had more to do with the time between when a voter is issued a paper card and when it is entered into the system. Commissioner Martinez stated that once the information actually goes into the local official's database, the guidance recommends an upload every 24 hours. The 24-hour period does not start until the local official enters the information into the database.

Secretary Nelson stated that the working group recognized the problems election officials might have in getting many

registrations at once. He also thanked EAC and other members of the working group for a good and productive experience.

Mr. Dickson asked about obligations under Motor Voter and Commissioner Martinez indicated that the statute requires that there be coordination of the statewide voter registration list with "other agency databases." The statute also requires that there be regular coordination between the Statewide Voter Registration List and death records and felony status. Question 10 of the draft guidance deals with how the Statewide Voter Registration list should be coordinated with other registration databases, which includes agencies defined by NVRA. Commissioner Martinez indicated that there was a great deal of discussion in the working group about the obligations created under Motor Voter.

EAC Chair Hillman noted that EAC has fielded concern from various groups that certain social service agencies are not meeting their responsibilities under NVRA. In some cases, when the agencies are not meeting their obligations, election officials may not follow up with them.

Mr. Thomas stated that the data will show who is complying and who is not. He asserted that where less than 50 percent of a state's registrations come through motor vehicles, that state is probably not doing their job in those offices. Mr. Thomas noted that HAVA specifically does not use real-time language and although real-time may be a nice concept, he doesn't believe it's necessary. In his state of Michigan, they do an update every 24 hours. Mr. Thomas stated that the draft guidance do not sanction bottom-up systems that are not functional. He stated that functionality should include the NVRA purging processes.

Secretary Kiffmeyer stated that her state of Minnesota built a real-time system for \$5.3 million. She then asked Ms. Herrera how long it took to enter her state's 13,000 registrations. Ms. Herrera responded that it took about 3 weeks to enter all the registration forms because there were duplicates and other problems in verifying the entries.

Mr. Kliner was appreciative of the language in response to question 10 because the worry in Tennessee was that integration in real-time would increase the chance for a security breach. He indicated that he thought the 24 hour batch process would allay fears that local elections might have about computerized processes.



EAC Chair Hillman noted that this was the first time EAC put together a working group and the Commission was pleased that it went so well. Commissioner Martinez expressed his appreciation for the people who participated in the process and invited comments in the upcoming weeks.

**Other Topics:**

Chair Lewis asked if anyone had a subject matter they wished to discuss. Ms. Sautermeister emphasized the importance of the voter registration process, especially as it concerns states being able to share information. Chair Lewis stated that one of the long-term goals would be integration from state-to-state, but until the state databases are functional in that manner, it would be unlikely.

Ms. Purcell informed about changes being proposed by the state legislature to Arizona's voter laws. She noted one such measure that would require identification and disallow a person from receiving a ballot if they did not have identification.

Mr. Shortbull stated that South Dakota uses an affidavit system that he thinks works out well. He complimented Secretary of State Nelson on his efforts to work out glitches in the affidavit system. He expressed concerns that voter ID requirements could result in denial of civil rights. Commissioner Martinez stated that EAC is limited by NVRA and HAVA, but that Justice has enforcement authority under Title III of HAVA. HAVA does not preclude a state from imposing an ID requirement. HAVA also states in Section 303(b) that if someone is unable to vote because of a lack of ID, they should still be able to cast a provisional ballot.

Mr. Dickson stated that the Carter-Baker Commission is considering the issues of identification requirements and state interactive voter registration databases.

Chair Lewis stated that the Board would bypass a discussion of voter registration problems for another time and invited comments on the National Mail-In Registration Form.

Karen Lynn-Dyson introduced herself as the research manger for EAC. She advised the board about EAC's efforts to update the NVRA mail-in voter registration form. She also noted that EAC is considering the idea of a web-based form that would be able to be updated frequently. EAC will produce a Spanish version of the form and is looking at translating the form into six other languages. The final draft should be ready for public comment in July.

Chair Lewis asked if EAC has determined that a registration must have a driver's license number or other unique identifier in order to be a valid registration. Commissioner Martinez responded that EAC has not given an interpretation to that particular question. Mr. von Spakovsky of the Department of Justice stated that voter registration for Federal office cannot be accepted or processed by a state unless the application includes a driver's license or similar identification.

Mr. Wilkey pointed out the problem of the high number of citizens who cannot read or write. He recommended that EAC have the form reviewed by a literacy expert and commented on how some states use graphics to make the form easy to read and fill out.

Secretary Vigil-Giron pointed out that there are three provisions of the Voting Rights Act that are due to expire in 2007 that will affect minority voters. Thirty-six or 37 states were told that they had 5 percent language minority populations and had to include election materials in those languages.

**Provisional Voting:** Chairman Lewis stated that the next topic was provisional voting and that there may be additional time for other topics at the end. He asked for a starting point for the discussion.

Commissioner Martinez briefed the board on implementation of provisional voting. He noted the variance among states regarding when a provisional vote would be counted. He stated that 27 states in the country require that for a provisional vote to be counted, it had to have been cast in the voter's assigned precinct. Ohio is an example of one of those states.

Other states provide that if you vote in the correct county, but not the correct precinct, at least a partial ballot will count for Federal office. Georgia and New Mexico are examples of these states.

EAC will likely develop practices on implementing provisional voting. He noted that EAC held a public hearing on this issue in Columbus, Ohio and found that many states had not codified their provisional voting procedures. Florida is an example of one state that has codified its provisional voting procedures.

Commissioner Martinez further stated that EAC will undertake an effort to survey all states to determine how states are handling implementation of provisional voting.

EAC Vice Chair DeGregorio stated that the use of statewide databases throughout the country should help eliminate provisional voting for a lot of people. The overall goal is to have as few provisional ballots as possible. He also noted that EAC is collecting data on the numbers of provisional votes cast and counted in the 2004 election.

Several board members commented on various efforts being made by states and local jurisdictions to assure accurate voter lists and access to this information on Election Day by poll workers. Ms. Herrera asked why EAC hadn't come up with guidelines on how to count or process provisional ballots since provisional voting is a HAVA requirement. Commissioner Martinez responded that HAVA gives responsibility for methods of compliance and implementation to the states. EAC will issue guidance and best practices to inform jurisdictions but the states will have to promulgate their own procedures.

A general information discussion ensued about various procedures and rates of provisional votes cast and counted.

EAC Vice-Chair DeGregorio stated that preliminary statistics collected by EAC indicate that in states that had a statewide database in place for the 2004 election, about 6/10ths of one percent of registered voters used provisional ballots. In states that did not have a statewide database, the rate is about 1.4 percent, approximately double. However, there was no difference in ballots that were ultimately counted; 65 percent in states with a statewide voter registration system and 64.4 percent in states without a statewide voter registration system.

Chair Lewis stated that provisional voting was obviously a contentious issue because elected officials cannot agree on how to handle it. EAC Chair Hillman added that HAVA leaves it up to the states to define the jurisdiction and determine how and when a provisional ballot will be cast. Nonetheless, she encouraged the board to exercise its prerogative and provide advice and suggestions to EAC on how it should approach its various areas of responsibility.

**Studies and Data Collection:** Chair Lewis then introduced the next area of discussion, EAC studies and data collection.

EAC Chair Hillman pointed everyone to tab five of their binder, the Help America Vote Act tab. At the beginning of Section 241, it states that on a periodic basis, EAC shall conduct studies. Section

241 specifies 18 areas and a 19<sup>th</sup> on such other matters as EAC determines appropriate.

Sections 271 through 283 talk about grants for research on voting technology improvements and testing of equipment and technology, but those provisions are not funded by Congress, so EAC does not have money to provide grants for research on voting technology improvements or to do pilot program testing. EAC nonetheless is conscious of its role in certifying labs and will find money to do testing as appropriate.

Sections 302 through 305 address provisional voting, voting information, computerized statewide voter registration list requirements, minimum requirements and methods of implementation left to the discretion of the states. All of these sections govern the areas where EAC will issue guidance. EAC has put mechanisms in place to complete studies required by NVRA and overseas voting and EAC Chair Hillman anticipates that the data EAC collects in the 2006 election will guide the work it does afterwards.

EAC Chair Hillman noted that EAC has scoped out the basic framework for the 2006 research and study agenda. By the end of August 2005, EAC will have broadly identified its research agenda and study activities for 2007.

Commissioner Martinez stated that EAC is trying to use their appropriation for 2005 to focus on their obligations under the statute; development of voting system guidelines through NIST, the convening of statutory bodies, the development of guidance pursuant to Sections 311 and 312, and the mandated research. The only project that EAC is doing that is discretionary is the Election Day survey, which was sent to the states and was important for establishing a benchmark. Section 241 of HAVA has a laundry list of items that Congress has suggested and that EAC should research eventually. The question is whether there will be funds available to do some of the suggested research, and the Commissioners are interested in input from the Board on what areas of Section 241 EAC should explore.

Chair Lewis stated that during the break, he was approached by two officials, one state and one local, who requested that EAC invite comment from election officials before they release the Election Day survey to the public. Chair Lewis then asked if the Commissioners had determined what studies they planned to do in 2006 and 2007.

EAC Chair Hillman responded that EAC had not yet identified specific studies it would conduct but rather had established a broad framework that was included with its FY 2006 budget request.

Chair Lewis requested that members of the Board look at Section 241 and then facilitated a discussion that resulted in the board recommending prioritized areas of study under HAVA Section 241.

The top five areas recommended are:

- (8) Methods of recruiting, training and improving the performance of poll workers.
- (2) Ballot designs for elections for Federal office.
- (3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites) and ensuring that registered voters appear on the voter registration list at the appropriate polling site.
- (5) Methods of ensuring the accessibility of voting, registration, polling places and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.
- (4) Methods of conducting provisional voting.

**Recess:** The meeting recessed for the evening at 4:46 PM.

**Reconvening:** Chair Lewis reconvened the meeting at 8:30 a.m. on Thursday, April 28, 2005.

**Updates and Reports:** Chair Lewis outlined the agenda for the day's proceedings. The first session would be a Q and A session with EAC commissioners. After that would be a report of the Executive Director Search Committee, which would be conducted with the Board of Advisors members only. At the conclusion of the committee report, the meeting will be reopened to the public for adoption of bylaws and election of officers. After that, the board can vote on any issues.

Chair Lewis outlined the voting procedures to elect officers and answered questions accordingly.

Chair Lewis then invited the Board to pose questions to the Commissioners. Thereafter, the Commissioners would ask questions of the Board.

A number of issues were discussed during the Q and A session. Mr. Harding indicated that members of the Access Board were at EAC's disposal to assist in developing a VVSG that could be digested by the general public. The Commissioners answered various questions regarding anecdotal statements being made about the November 2004 election; possible means to increase voter turnout; VVPAT and possible alternatives; possible scenarios for jurisdictions not in compliance with HAVA come January 2006; access to EAC website; the voting systems certification and laboratory accreditation processes; the high rate of turnover amongst volunteers at groups that do voter registration training; and obstacles facing state and local election officials.

**Executive Director Search Committee Report:** The Board then met in Closed Session for 20-30 minutes to receive a report from its Executive Director Search Committee.

**Adoption of Bylaws:** Chair Lewis stated that the meeting was reopened to the public and that they would move on to the business section of the meeting. According to Robert's Rules, the group would read the bylaws and consider them as individual sections. After adoption of the bylaws and review of the proxies, there would be elections of officers. He then invited Ms. Kaufman, Chair of the Bylaws Committee, to go through the first reading of the bylaws.

Ms. Kaufman reported that the Bylaws Committee consisted of Beverly Kaufman, Chair, Wendy Noreen, Sue Sautermeister, Ernie Hawkins, and Doug Lewis. The first draft of recommended bylaws was distributed to the Board via e-mail prior to the meeting and copies were distributed on April 27. The Committee members in attendance had a mini-meeting on the 27th and were joined by other board members (Mr. von Spakovsky, Secretary Kiffmeyer, Nelson, and Mr. Crangle) who submitted recommendations for amendment. After the discussion, their suggestions were accepted and distributed to the board.

Mr. von Spakovsky moved to dismiss the reading because everyone in attendance had the bylaws in front of them and the friendly amendments had been accepted by the committee. He also moved to accept the bylaws. Secretary Vigil-Giron seconded the motion.

Secretary Kiffmeyer agreed with the dispensing of the reading, but had a question about a proposed amendment. Chair Lewis asked if Mr. von Spakovsky would amend his motion to dispense with the reading first and Mr. von Spakovsky agreed; Secretary Nelson seconded. Chair Lewis agreed that they would proceed without reading the bylaws and would proceed to the consideration.

As to Article 1, hearing no objections, Chair Lewis asked that all in favor of adopting Article 1 say, "aye." The Board voted to adopt Article 1.

Mr. Harding asked if Article 2 should cite the Federal Advisory Committee Act and Chair Lewis responded that he thought it was cited. Mr. Harding stated that the Article refers to the Act without a citation. Mr. Harding agreed with Chair Lewis that the Board could incorporate the citation by reference and attach them to future editions.

As to Article 2, hearing no objections, Chair Lewis asked that all in favor of adopting Article 2 say "aye." The Board voted to adopt Article 2.

Chair Lewis stated that Article 3 came straight from the law, but contained an incorrect item. Item I should read, "two members appointed by the International Association of Clerks, Recorders, Elections Officials, and Treasurers."

Mr. Hillman observed that he knew the language came from the law, but for the record, there is no such thing as the Office of Public Integrity in the Department of Justice. It is the Public Integrity Division of the Department of Justice. Chair Lewis asked that the correct information be sent to EAC.

As to Article 3, membership, hearing no objections, Chair Lewis asked that all in favor of adopting Article 3 say "aye". The Board voted to adopt Article 3.

As to Article 4, terms of service and filling of vacancies, Chair Lewis asked that all in favor of adopting Article 4 say "aye". The Board voted to adopt Article 4.

As to Article 5, officers, no one voiced an objection that the Board shall elect a Chair, Vice-Chair and Secretary; and the officers shall be elected by secret ballot, each position lasting for a period of one year, with no officer serving more than two consecutive terms in one office. Chair Lewis stated that he noticed while looking at the

bylaws that there was no indication of when elections or meetings would be held. Ms. Sautermeister explained that they only have to meet once a year and did not want to limit it to a certain meeting. Secretary Nelson suggested that it specify the required meeting as the first meeting each year. Mr. Thomas asked if the term of office would be affected with no meeting specified and Chair Lewis suggested that the term be one year or until the next election is held, to which Mr. Thomas agreed.

Secretary Vigil-Giron asked if the Parliamentarian is going to adopt rules of order or if the Board would adopt Robert's rules. Secretary Carnahan asked if the Committee suggested having party differences between the Chair and Vice Chair. Chair Lewis stated that he was hoping not to do that although he would consider it. There are some members of the group who cannot be identified with a particular political party and should not be ruled out because of that. Secretary Carnahan commented that EAC is separated by party and so are Secretaries of State. Chair Lewis indicated his understanding, but stated that some people in the group are not supposed to engage in partisan politics. Secretary Carnahan suggested that the Board categorize people as part of a party or independent or undeclared.

Ms. Kaufman stated that she agreed and that the Committee discussed the same issue but decided it would be better left to discussion. Mr. Dickson pointed out that the group had half an hour and asked that they deal with the issue expeditiously. Secretary Carnahan proposed an amendment to include a statement that the party filling a seat shall not fill the same seat two years in a row and that the Chair and Vice Chair should be from different parties. Chair Lewis suggested that one person being unaffiliated should not preclude their predecessor from also being unaffiliated. Secretary Vigil-Giron seconded. Chair Lewis asked if there was further discussion on the amendment that the Chair and Vice Chair be of different political parties. Mr. Hillman asked for guidance from the General Counsel and stated that he assumed that a Board of Advisors was an apolitical entity, so party identification might be unusual.

EAC Chair Hillman state that HAVA specifically says that appointment to the Board shall take into consideration party affiliation so there is a balance. Mr. von Spakovsky stated that in the year and a half that the Board has been operating, politics has not played a part in the Executive Committee and he did not wish to introduce politics now. There is a large mix of members on the Board, from all levels of government and Mr. von Spakovsky



stated that he does not want to know what political party each member affiliates with because it is unimportant to the Board's work.

Mr. Crangle stated that he thought most Americans look at party affiliation in terms of public image, and in that sense, it may be advisable to adopt the amendment. Mr. Hillman agreed with Mr. von Spakovsky about because he believes that identifying people with political parties suggests partisanship. Mr. Shortbull called the question and Chair Lewis asked for a vote on whether to adopt the procedure that the Chair and Vice Chair should be from different political parties. Nine were in favor and twelve were opposed, so the motion failed.

As to Article 5, added to the number 3 was "or until the next election." Added to number four was "for a specific office." And added as number 6 is "elections shall be held at the first meeting of each calendar year." Hearing no further comment, Chair Lewis asked that all in favor say "aye." The Board voted to adopt Article 5.

As to Article 6, duties of the officers, Chair Lewis asked all those in favor say "aye." The Board voted in favor of Article 6.

As to Article 7, meetings, Chair Lewis noted that the amendments notice went from 30 to 45 days and may be waived by a majority agreement of the members; meetings may be held by electronic means. EAC Chair Hillman asked that the number of meetings per calendar year be subject to the availability of funds. Hearing no further objections, Chair Lewis asked that all in favor say "aye." The Board voted to adopt Article 7.

EAC Chair Hillman asked about the waiver in Article 7. EAC is required to post a notice of all meetings in the Federal Register and wanted to be sure that they still provided for notice in the Federal Register. Ms. Noren suggested adding, "but not less than 14 days prior to" and Mr. von Spakovsky suggested to the extent permitted by law. It was his amendment and he intended that if there were an emergency, the group could waive the period. Chair Lewis agreed to change the language to "as permitted by law" and amended since it was already adopted.

As to Article 8, quorum and proxy voting, Chair Lewis suggested that proxies be given up to the day of the session. Mr. Crangle moved on the motion and Mr. Shortbull seconded. Thereafter, the Board voted to amend to subparagraph 2 of Article 8 to include the

words "up to the day of the meeting." The board voted to adopt Article 8.

As to Article 9, standing committees, Secretary Kiffmeyer suggested that E and F use parallel language since they require separate members from NASED and NASS. Secretary Vigil-Giron seconded the motion and Ms. Kaufman stated that she did not want to dilute the representation of IACREOT or NACRC as a result. Secretary Vigil-Giron stated that the goal was to represent different perspectives. Ms. Sautermeister asked if the motion only pertained to Voting Systems Standards Committee, to which Chair Lewis responded in the affirmative. He also noted that he would be objecting to it because it did not include a representative from the Elections Center. He suggested the addition of an H and an I and that the Election Center be represented. Secretary Kiffmeyer asked Chair Lewis if he was suggesting an amendment to the amendment proposed and he responded yes.

Mr. Nelson stated that his original intention in the language was to make sure that there was at least one person representing the state level organization, not to include someone from every organization. Ms. Herrera stated that it was important to separate Secretaries of State and State Election Directors since they certify and qualify machines. Chair Lewis suggested that they say one member from NACRC, IACREOT, the Election Center, NASS, and NASED be part of it, eliminating E through G, and the Committee would be 11 members instead of nine. The two added members would be the Election Center and dividing NASS and NASED.

Mr. Dickson asked if the Board was properly balancing interest groups in terms of groups that represent citizens and Chair Lewis responded that there would be five from the groups they just talked about and one from disabilities. Chair Lewis asked if they should add more groups from non-elections organizations. Mr. Kliner stated that if they expanded the groups, some of the people that would like to serve but are not affiliated could participate. Chair Lewis asked Secretary Nelson if it would be possible to say that the Chair can select members who are not part of the organizations and Secretary Nelson responded that he could have three at-large appointments from the board. Chair Lewis suggested that the Chair of the Board of Advisors select from people who are not already representative of the five organizations mentioned. Ms. Kaufman suggested restating the language to read each of the five organizations mentioned could have only one representative on the Committee.

Secretary Vigil-Giron asked if the group needed to correct the IACREOT name, and Chair Lewis pointed out that it did need to be corrected throughout. Mr. Dickson requested that the language be specific as to the pool from which the Chair could select members since he hoped the document would be around for many years.

The Board voted in favor of amending E to read, "One member, excluding the Chair, shall represent each of the following organizations."

Mr. Dickson moved to create subsection F, which would allow the Chair to select members who are not members specified in section E. Thereafter, the Board voted in favor of this amendment.

As to Article 9, hearing no objection, Chair Lewis asked that all in favor say "aye." The Board voted in favor of Article 9.

As to Article 10, amendments, Chair Lewis noted that the bylaws could be amended not less than 30 days prior to an annual meeting. Mr. Dickson asked if the bylaws can only be amended at something designated as an annual meeting. Secretary Kiffmeyer suggested not using the annual meeting language since they struck it in an earlier adoption. Chair Lewis suggested eliminating the word annual, which would include electronic meetings as well. Ms. Kaufman asked if they would still need a two-thirds vote to adopt bylaws and Secretary Nelson responded that two-thirds was correct.

As to Article 10, as amended, Chair Lewis asked that all in favor say "aye." The Board voted in favor of Article 10, as amended.

**Proxy Voting:**

EAC Chair Hillman expressed her hope that the availability of a proxy vote would not encourage people not to attend in person. Of the 37 members of the board eight are not very responsive and EAC is doing their best to work on them, but that does mean that 29 members are active and EAC Chair Hillman hopes to see a majority at every meeting.

Mr. Dickson suggested that the bylaws committee should decide on whether or not to limit the number of proxies. Chair Lewis stated that the issue would be assigned to the bylaws committee for recommendations at the next meeting. Secretary Kiffmeyer suggested that the bylaws reconcile the timing for getting proposing bylaw changes and getting information out to members

so that the Chair has a reasonable ability to get proposals and pass them on without it having to happen on the same day. Chair Lewis stated that ordinarily the proxies would be submitted to a Proxy committee to verify them as legitimate, but he suggested doing a quick adoption. There were proxies from David Orr, Wendy Noren, James Elekes, Ernie Hawkins, Jim Carnes, and Secretary Kiffmeyer. Chair Lewis responded to a question by indicating that the proxy would vote for those not present.

Mr. Crangle asked how people could vote by proxy before the adoption of the bylaws and Chair Lewis responded that he told everyone in advance that there would be proxies assuming the adoption of the bylaws. The Board voted to accept the proxies as submitted for this meeting.

Chair Lewis stated that Mr. Harding, Ms. Purcell, Ms. Kaufman, Director Brunelli, and the Chair would vote for themselves and their proxies. Chair Lewis counted 19 present and 6 proxies, with one non-voting member present. He got agreement that a majority would be 13 and passed around the ballots.

**Election of Officers:** Chair Lewis asked for nominations for Chair. Secretary Vigil-Giron nominated Mr. Crangle. Ms. Purcell nominated Ms. Kaufman. Each candidate made brief presentations about their interests in serving as Chair of the EAC Board of Advisors.

Votes were cast, Chair Lewis counted the votes and found that Ms. Kaufman received a majority of the votes with 18. Mr. Crangle moved to have the vote cast unanimously, Mr. Hillman seconded the motion and the Board voted in favor of the motion. Mr. Lewis congratulated Ms. Kaufman, who immediately assumed responsibilities as chair of the Board.

Chair Kaufman recognized Mr. Sirvello, who nominated Mr. von Spakovsky for the position of Vice-Chair. Secretary Vigil-Giron nominated Mr. Thomas. Mr. Shortbull stated that he was uneasy about having a member from the Department of Justice as an officer of Board.

The votes were cast and the ballots were counted with Mr. Thomas winning a majority with 14 votes.

Chair Kaufman asked for nominations for the office of Secretary. Mr. Shortbull nominated Secretary Vigil-Giron, who declined because of her duties as NASS President, but nominated Mr. Sirvello. Former Chair Lewis moved for nominations to cease,

which Ms. Herrera seconded. The Board voted in favor of the motion. Thereafter, The Board voted in favor of Mr. Sirvello as Secretary.

**Items for Action:**

Chair Kaufman thanked Mr. Lewis for his invaluable services as the Board's first chair. She stated that she has some huge shoes to fill and is grateful for the opportunity.

Mr. Dickson moved to have the Advisory Board urge EAC to engage experts to help with ballot design. The motion was seconded.

Mr. Harding asked what Mr. Dickson's intent was in suggesting the motion. Mr. Dickson stated that he wanted to get at the hard science of ballot design. Secretary Nelson asked if it was appropriate to direct the Commission to work with a particular organization. Chair Kaufman suggested that Mr. Dickson change the wording of his motion to soften the directive. Mr. Dickson agreed to insert "such as" so that other groups could be considered.

Chair Kaufman restated the motion moved that the Board urge EAC to engage experts to help with guidance on ballot design. Specifically, she moved that they reach out to those in low literacy, such as Democracy Design and simplified language. The Board voted in favor of the motion.

Ms. Purcell requested that suggestions on the VVSG from the Board members be e-mailed to Ms. Purcell or Mr. Harding.

Mr. Shortbull moved that the Executive Director report to be moved to EAC, which was seconded by Mr. Harding. The Board voted in favor of the motion.

Mr. Thomas moved to adjourn. The motion was seconded by Secretary Vigil-Giron.

**Adjournment:**

The meeting was adjourned at 12:41 P.M.

## Eagleton/Mortiz Timeline

<b>Date</b>	<b>Description</b>
01/12/05	EAC staff draft proposes SOW for Provisional Voting
01/13/05	EAC staff presents draft proposed SOW for Provisional Voting to Commissioners
01/17/05	EAC staff drafts proposed SOW for Voter ID
01/18-02/14/05	EAC staff, in consultation with the Commissioners, draft proposed combined SOW for Provisional Voting and Voter ID
02/17/05	EAC staff meets with Commissioners and distributes SOW and outline of contracting process via email for Commissioner approval
03/02/05	EAC staff and Commissioners meet to discuss Provisional Voting and Voter ID Contract
03/23/05	EAC staff discuss Evaluation Criteria for the Provisional Voting and Voter ID RFP via email
03/30/05	EAC staff discuss Technical Evaluation Criteria for Provisional Voting and Voter ID Contract via email
05/24/05	EAC Commissioners Approve Contract Award to Eagleton
05/25/05	Eagleton notified of Contract Award
05/26/05	EAC Commissioner, EAC staff, and Eagleton meet at EAC office. Political balance of Peer Review Group amongst topics discussed. Commissioner DeGregorio subsequently suggests additional Peer Review Group participants
06/03/05	EAC staff notifies bidders via email that Eagleton has been awarded the Contract
06/06/05	Eagleton submits Revised Workplan extending deadlines to EAC staff via email
06/07-06/17/05	EAC staff and Eagleton conduct email discussion regarding Eagleton's plans to survey local election officials
06/09/05	EAC staff notifies Eagleton via email that 06/06 Workplan is not an acceptable deliverable
06/17/05	EAC staff receives Eagleton's revised workplan via email
06/20/05	EAC staff receives Eagleton's revised workplan via email
06/23-07/15/05	EAC staff and Eagleton discuss Peer Review Group via email
06/23/05	EAC staff emails Eagleton's proposed Peer Review Group to the Commissioners
06/27/05	EAC staff and Commissioners discuss the proposed Peer Review Group at briefing
07/06-07/07/05	Eagleton emails EAC staff information regarding Eagleton's local election official survey
07/08/05	Eagleton submits response to EAC staff's suggestion for additional Peer Review Group, including a list of proposed members
07/12/05	EAC Commissioners and staff hold teleconference with Eagleton

07/14/05	EAC staff and Eagleton discuss sample size and budget allocation for survey of local election officials via email
07/14/05	EAC staff receives Eagleton June 2005 Progress Report via email
07/15/05	EAC staff and Eagleton hold teleconference approving the composition of Eagleton's Peer Review Group
07/15/05	EAC staff emails Final Agenda for 07/28/05 hearing to Eagleton
07/15-07/26/05	EAC staff and Eagleton discuss details of 07/28 hearing via email
07/19-07/21/05	EAC staff and Eagleton hold email discussion regarding Eagleton's proposal for research regarding provisional ballot design. EAC staff declines Eagleton's proposal for adding ballot design to the project
07/19-08/08/05	Dates for meeting with EAC staff discussed with Eagleton via email
07/28/05	EAC Public hearing held at Cal/Tech in Pasadena. Eagleton briefs EAC Commissioners on progress of research
08/01/05	EAC staff and Eagleton discuss Peer Review Group via email
08/04/05	Vice-Chair DeGregorio provides EAC staff with a list of centrist/conservative groups via email in regards to Peer Review Group recruitment. EAC staff forwards list to Eagleton
08/08/05	Meeting with Eagleton on 09/06 at the EAC confirmed via email
08/09/05	Eagleton holds first teleconference with Peer Review Group regarding Provisional Voting Report
08/15/05	EAC staff receives July 2005 Progress Report from Eagleton via email
08/19-09/02/05	Commissioners, EAC staff, and Eagleton discuss potential members of Peer Review Group via email
09/01/05	Eagleton submits materials to EAC staff for 09/06 briefing via email
09/01-09/03/06	Eagleton emails answers to questions regarding the Provisional Voting Report analysis to EAC staff. Additional materials Fed Exed to EAC
09/05/05	EAC staff receives copy of Eagleton's PowerPoint presentation and alternatives document for 09/06 meeting via email
09/06/05	Commissioners and EAC staff hold briefing with Eagleton to review Provisional Voting Draft of Analysis and Alternatives Paper and discuss outline and direction of the Preliminary Guidance Document
09/14/05	Eagleton sends email to EAC staff requesting EAC Commissioner feedback on Alternative Next Steps
09/15/05	EAC staff receives Eagleton August 2005 Progress Report via email
09/21/06	Eagleton holds second teleconference with Peer Review Group
09/30/05	Teleconference with Eagleton, EAC staff, and Commissioner Martinez to discuss general direction and objective of research
09/30/05	EAC staff receives Provisional Voting Survey Report from Eagleton via email
10/17/05	EAC staff receives September 2005 Progress Report and Peer Review Group Summary Comments from Eagleton via email
11/14/05	EAC staff receives October 2005 Progress Report via email
11/14/05	EAC staff meets with Eagleton regarding execution of surveys
11/15-11/23/05	EAC staff and Eagleton discuss the status of the reports and the process for completion of reports via email

11/15/05	Eagleton requests No-Cost Extension and EAC staff initiates process via email
11/28/05	EAC staff receives Eagleton's Provisional Voting Report via email
11/29/05	EAC staff contacts Eagleton via email to request more detailed invoices for the new fiscal year
12/13/05	EAC staff receives Eagleton November 2005 Progress Report via email
01/17/06	EAC staff receives Eagleton December 2005 Progress Report via email
01/25/06	EAC staff approves Eagleton's no-cost extension request and notifies Eagleton via email
02/16/06	EAC staff receives Eagleton January 2006 Progress Report and inquires as to status of Voter ID Report via email
02/22/06	Eagleton holds teleconference with Peer Review Group regarding Voter ID Report
02/23/06	EAC staff discusses comments/edits to Eagleton via email
03/15/06	EAC staff inquires into ETA for Eagleton's Voter ID Report via email
03/15/06	EAC staff receives Eagleton Draft Voter ID Report via email
03/16/06	Eagleton Draft Voter ID Report distributed via email to Commissioners for comment
03/16/06	Eagleton emails Voter ID Report Appendix to EAC staff
03/16/06	EAC staff receives Eagleton February 2006 Progress Report via email
03/17/06	EAC staff emails Eagleton requesting explanation for using CPS rather than Election Day Survey data
03/21/06	Eagleton responds via email to EAC staff's inquiry into reasoning for use of CPS data rather than Election Day Survey
03/24/06	EAC staff informs Eagleton via email that it has requested Commissioner feedback regarding the Draft Voter ID Report by COB
03/28/06	EAC staff poses a number of questions via email regarding Eagleton's statistical manipulations, use of Census data, and statements made in Voter ID Report
03/28/06	EAC staff sends email request to Eagleton for confirmation that final payment invoice information is forthcoming
03/28/06	EAC staff participates in teleconference with Eagleton project staff, sharing general thoughts and posing questions about data and statements in Voter ID Report
03/31/06	EAC staff receives Eagleton's Draft Voter ID Report for 04/03 meeting via email
04/03/06	Commissioners Hillman and Davidson, EAC staff, and Eagleton meet in the morning to discuss Voter ID Report. Commissioners DeGregorio and Martinez, EAC staff, and Eagleton meet in the afternoon to discuss Voter ID Report
04/06/06	EAC staff sends email to Eagleton inquiring into next steps for the final Provisional Ballot and Voter ID Reports
04/13/06	EAC staff has teleconference with Eagleton regarding next steps for the final Provisional Ballot and Voter ID Reports. EAC staff requests that Eagleton convene a teleconference with Peer Review Group and EAC staff and/or Commissioners to discuss statistical analysis and Voter ID



	Report. EAC also reports that it will convene second Peer Review Group to seek further feedback. Eagleton also provides EAC staff with an extension timeline via email
04/14/06	EAC staff receives Eagleton's March 2006 Progress Report via email
04/19/06	EAC staff begins to process Eagleton's No-cost Extension request
04/21/06	Eagleton formally requests No-Cost Extension via email
04/25-04/27/06	EAC staff has email discussion with Eagleton regarding project timeline over next several weeks, including peer review, teleconference, and presentations at board meetings and public hearing
04/26/06	EAC staff approves Eagleton's No-Cost Extension Request and notifies Eagleton via email
04/27/06	EAC staff requests final draft of Provisional Ballot Report from Eagleton via email
04/28/06	EAC staff notifies Eagleton via email of Peer Review Group that the EAC has selected for Voter ID Report and sets 05/11 deadline for review and teleconference
05/01/06	EAC staff contacts Voter ID Peer Review Group via email regarding review and 05/11 teleconference
05/04/06	Eagleton distributes Revised Voter ID Analysis to EAC staff via email
05/05/06	EAC staff distributes Revised Voter ID Analysis to 2 <sup>nd</sup> Peer Review Group via email
05/08/06	EAC staff inquires via email as to the status of the final report on Provisional Voting from Eagleton
05/08/06	EAC staff receives Eagleton's Draft Voter ID Report via email
05/09/06	EAC staff receives Eagleton Draft Voter ID Report and Appendices and Distributes to Peer Review Group via email
05/09/06	EAC staff informs Eagleton via email that the Commissioners will review the final Provisional Voting and Voter ID Reports at their 05/16 and 05/18 meeting and that materials for distribution to the Board of Advisors and Standards Board must be ready by 05/18
05/09-05/17/06	EAC staff and Eagleton discuss details regarding presentations to the 05/23 and 05/24 Standards Board and Board of Advisors Meetings via email
05/11/06	Teleconference between EAC staff, Eagleton, members of the original Peer Review Group, and additional Peer Review Group members selected by the EAC regarding Voter ID Draft Report
05/12/06	EAC staff receives Eagleton's Draft of Provisional Voting Report for Review by the Standards Board and Board of Advisors via email
05/16/06	Commissioners and EAC staff hold briefing to discuss the presentation of Eagleton's Draft of Provisional Voting Report to the Standards Board and Board of Advisors. EAC staff emails feedback to Eagleton
05/17/06	EAC staff receives Eagleton's Draft of Voter ID Report and Appendices for Review by the Standards Board and Board of Advisors via email. EAC staff emails the information to the Commissioners
05/18/06	Commissioners and EAC staff hold briefing to discuss the presentation of Eagleton's Draft of Voter ID Report to the Standards Board and

	Board of Advisors. Commissioners elect to delay Eagleton's presentation of the Voter ID Report
05/18-22/06	EAC discusses details of Provisional Voting presentation with Eagleton via email
05/23/06	Eagleton presents Provisional Voting Report to EAC Standards Board
05/24/06	Eagleton presents Provisional Voting Report to EAC Board of Advisors
06/06/06	Eagleton sends letter to Commissioner DeGregorio regarding Provisional Voting and Voter ID Reports
06/08-06/26/06	EAC staff and Eagleton discuss conclusion of the Contract via email
06/05/06	EAC Executive Director sends letter to Eagleton regarding lack of clarity and ETA for final results of Voter ID study
06/29/06	Final Provisional Voting and Voter ID Draft Reports received by EAC staff from Eagleton via email. Attachments sent Fed Ex
06/30/06	EAC staff sends letter to Eagleton regarding remaining tasks to close out Contract
07/05/06	Telephone conversation between Eagleton and EAC staff regarding EAC's 06/30/06 letter regarding remaining tasks to close out Contract
07/06/06	Eagleton emails written summary of remaining tasks to close out Contract to EAC staff
07/19/06	Eagleton submits June 2006 Progress Report via email
07/20/06	Eagleton submits April 2006 and May 2006 Progress Reports via email
08/16/06	Eagleton submits final letter regarding Study Release to EAC staff via email and requests release of both Reports
08/24/06	Commissioners and EAC staff hold briefing regarding Eagleton Provisional Voting Draft Report and EAC Statement
08/24-09/06/06	EAC Commissioners and staff discuss Eagleton Provisional Voting Draft Report and EAC Statement to be released
08/28/06	EAC staff notified via email by Michael McDonald that Eagleton has released data from Provisional Voting and Voter ID Reports
08/31/06	EAC Executive Director notifies Eagleton that it is not authorized to release the Voter ID Draft Report as the Report has not been finalized and has not been officially released by the EAC.
09/15/06	EAC Commissioners and staff discuss release of information from the Voter ID Report to Hill staffers
09/28-09/29/06	After meeting with EAC staff, HR Communications edits Eagleton Provisional Voting Report for clarity and tone. HR Communications emails edits to EAC staff
10/02/06	EAC staff emails the professionally edited draft of Provisional Voting Report to Commissioners
10/03/06	EAC Commissioners and staff discuss the Provisional Voting Report at briefing
10/03/06	Eagleton contract closed and \$2,910.77 balance remaining deobligated
10/04/06	EAC staff and Eagleton review via email what information has been released regarding the Eagleton Reports
10/27/06	Eagleton writes to EAC Executive Director requesting an approximate

	date of release for the Voter ID Report
01/23/07	Federal Reporter Notice published regarding 02/28/07 Public Hearing
01/30-02/06/07	EAC staff discusses Eagleton Voter ID Draft Report and potential talking points for Voter ID segment of Public Hearing
02/06/07	Eagleton submits draft text of Presentation for 02/08 EAC Public Hearing to EAC staff via email
02/08/07	EAC holds Public Hearing where Eagleton provides Testimony and submits Voter ID Draft Report
03/06/07	Commissioners and EAC staff hold briefing regarding Eagleton Draft Voter ID Report and EAC Draft Statement
03/07/07	Commissioner Davidson appears before House Appropriations Subcommittee on Financial Services
03/06-03/20/07	EAC staff and Eagleton discuss edits to Voter ID Draft Report via email
03/21-03/29/07	EAC staff, and Eagleton discuss edits to Press Statement accompanying release of Eagleton Voter ID Draft Report
03/30/07	EAC releases Eagleton Voter ID Draft Report and Statement, Commissioner Rodriguez and Eagleton interviewed by NPR

*GAVIN'S  
COMMENTS*

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY**

**INTRODUCTION**

*Confidential*  
Voting fraud and intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted ~~some~~ research methodology on how to assess the existence and enforcement of election crimes in this country. *walking*

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC, as well as its advisory boards, felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding *12* was reached, a definition <sup>was</sup> had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area. *along side*

To accomplish these tasks, EAC employed two consultants, ~~Job Serebrov and Tova Wang~~,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged to (1) research the current state of information on the topic of voting

*under the supervision of*  
<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

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fraud and voter intimidation; (2) develop a uniform definition of voting fraud and voter intimidation; and (3) propose recommended strategies for researching this subject.

EAC ~~consultants~~ reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Robert Bauer**  
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

at what point do we stop harp on who... i.e. lots more to stop books + then speak of "EAC actions" ?

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

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- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### **Books**

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

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“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered, the stiff penalties associated with this type of fraud, and that it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

**Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. <sup>Very few cases that are decided at the district court level are reported for public review.</sup> *decisions*

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

**Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters, *on the news? herolds?*
- multiple voting,
- felons voting.

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- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

### DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. ~~Upon further inspection, however,~~ It is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and ~~appropriate~~ activities. To arrive at a common definition and list of activities that can be studied, EAC <sup>with AS&S</sup> assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC ~~in the future~~.

*Avoid word fraud?*

#### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime. *usu.*

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter

~~is fraud~~  
~~letter~~

registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

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The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

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### The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

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*use explained of why civil is being*  
*030537*  
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The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting (either early, absentee, or election day); vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### ***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

### ***Acts of Coercion***

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

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### RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such



activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition

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of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

*Matt's comments*

**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY**

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

*Is it a  
phrase  
OR  
a separate  
concept?*

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

*also discuss*

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

*Good!  
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statements*

To accomplish these tasks, EAC employed two consultants, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation, (2) to develop a uniform definition of voter fraud and voter intimidation, and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected

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experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation.



Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “ \_\_\_ ”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

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- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

**Books**

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

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Voter intimidation is also a topic of some debate. Generally speaking there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Pat Rogers**  
Attorney, New Mexico

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

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**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered and that there are stiff penalties associated with this type of fraud.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies

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have more time and resources but have limited jurisdiction. They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “\_\_\_”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from ~~appeal courts~~ <sup>COURTS OF APPEAL</sup>. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “\_\_\_”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation

throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly

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refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

DOESN'T IT INVOLVE A VOTER?

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

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*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;

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- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

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### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants ~~developed recommendations~~. In addition, the working group, and some of the persons interviewed as a part of this study provided recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the

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National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

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While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

#### *Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

### **CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. <sup>This</sup> These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

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comment*

**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY**

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic <sup>have</sup> ~~has~~ been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this phase one of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine, and in some cases limit, the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation, (2) to develop a uniform definition of voter fraud and voter intimidation, and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected

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experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope, and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was ~~vetted and~~ edited to produce this final report.

## EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation.

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Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_\_”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally speaking, there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, <sup>and</sup> even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Is there anything we can say about absentee fraud? details focus only on VR and give no detail on absentee

### Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Stephen Ansolobehere**  
Massachusetts Institute of Technology

**Lori Minnite**  
Barnard College, Columbia University

**Chandler Davidson**  
Rice University

**Neil Bradley**  
ACLU Voting Rights Project

**Tracey Campbell**  
Author, *Deliver the Vote*

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Douglas Webber**  
Assistant Attorney General, Indiana

**Pat Rogers**  
Attorney, New Mexico

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered and that there are stiff penalties associated with this type of fraud.

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Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies

have more time and resources but have limited jurisdiction. They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “ \_\_\_ ”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “ \_\_\_ ”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation



throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges, and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

~~indent~~ → Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly

refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the **Civil Rights** Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the ~~voter registration and voting processes~~.

### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception; acts of coercion; acts of damage or destruction; and failures or refusals to act.

~~Generally speaking,~~ Election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance<sup>to</sup> possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate <sup>in</sup> at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter<sup>;</sup>;
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

~~Acts of Deception~~  
*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or ~~to~~ delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

### **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

#### ***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

**Recommendation 4: Review Complaints Filed With “ MyVote1” Voter Hotline**

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a ~~1-800~~<sup>1-800 free</sup> voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

} not scientific at all!  
definite bias

**Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice**

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation, attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

→ election crimes?

**Recommendation 7: Attend Ballot Access and Voting Integrity Symposium**

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues <sup>are</sup> presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the

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National Voter Registration Act, and the Help America Vote Act are described and explained to participants,

***Recommendation 8: Conduct Statistical Research***

not statistical research  
^

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

what data would be collected?

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls ~~in~~ on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

Fed Gov already has observers

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

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Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons actually voted.

MVRA  
ISSUES

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedures as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

**Accepted Recommendations**

There has never been a comprehensive study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.



Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning <sup>election</sup> ~~voting~~ crimes are the administrative complaint ~~processes~~ <sup>procedures</sup> that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

### *Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. <sup>This</sup> ~~These~~ data not only will tell us what types of election crimes are committed ~~and where fraud exists~~, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

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do an EAC vs. check

### EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including "voting fraud" and "voter intimidation." In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of "voting fraud" and "voter intimidation" and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of "election crimes." "Election crimes" are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC's review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at "election crimes." Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states' chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.

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## **INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

### **PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

*italics*  
EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".



**December 2006**

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of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**

Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**

Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants



or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### Reports and Studies of Voting fraud and Intimidation

Over the years, there <sup>hes?</sup> have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

#### Articles and Reports

Alpha order?

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.



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- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."



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- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," *Demos: A Network of Ideas and Action*, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### **Books**

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.





During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

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It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

that is, voters who are...

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation! Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

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One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

**Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:



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**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin



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**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**John Tanner**  
Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".



## Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

## Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information <sup>as to</sup> whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening <sup>as to</sup> the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voting fraud <sup>regarding</sup> and voter intimidation. However, these reports do not



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provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term "election crimes" for its future study.

### Current Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black's Law Dictionary, Eighth Edition, p. 685.

"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter. <sup>By?</sup> <sup>that</sup>

The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses <sup>end?</sup>



to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

### New Terminology

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

*another word?*

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

*activities that EAC does not define as . . . .*



## The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### *Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;



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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

### Acts of Coercion

- Using, threatening to use, or causing [to be used] <sup>the use of?</sup> force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage, harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other things of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting; <sup>the</sup>
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable things in exchange for signing or refraining from signing a petition proposing an initiative; <sup>5</sup>
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other things of value in exchange for registering to vote. <sup>5</sup>





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### *Acts of Damage or Destruction*

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

### *Failure or Refusal to Act*

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future



study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

## RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### *Recommendation 1: Conduct More Interviews*

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### *Recommendation 2: Follow Up on Media Research*

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

### *Recommendation 3: Follow Up on Allegations Found in Literature Review*

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were ~~certainly~~ limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations ~~discovered~~ in the literature review.

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**Recommendation 4: Review Complaints Filed With "MyVote1" Voter Hotline**

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

**Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice**

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and "monitor field reports" from Election Day.

**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

**Recommendation 7: Attend Ballot Access and Voting Integrity Symposium**

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public



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Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- o Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- o Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future research ~~should~~ should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

~~Because~~ <sup>Therefore,</sup> absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide



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recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, ~~the~~ EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

*the*  
***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, ~~the~~ EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

*be*  
Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.



December 2006

## Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

### *Survey Chief Election Officers Regarding Administrative Complaints*

The Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.



In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.



December 2006

### *Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable <sup>2w</sup> data set concerning the existence and enforcement of election crimes is assembled, a ~~real~~ analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available ~~to the~~ effort.

### CONCLUSION <sup>for the</sup>

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.





**APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 3 – SUMMARIES OF INTERVIEWS**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

**APPENDIX 4 – SUMMARIES OF CASES REVIEWED**

Available on EAC Website, [www.eac.gov](http://www.eac.gov).

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice  
January 13, 2006

FRAUD &  
INTIMIDATION  
REPORT  
FILE

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

*How are Prosecution Decisions Made?*

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario - a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. ~~The department grants such hearings easily because such defendants are likely to provide information about others involved.~~

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

*Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?*

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

*Does it Matter if the Complaint Comes from a Member of a Racial Minority?*

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**Deliberative Process  
Privilege**

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

*What Kinds of Complaints Would Routinely Override Principles of Federalism?*

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

*Are There Too Few Prosecutions?*

DOJ can't prosecute everything.

*What Should Be Done to Improve the System?*

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

*Other Information*

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ~~(Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).~~

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

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Cases:

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Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

~~If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.~~

Do they care about this?

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes, he Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

How is this different?

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.
2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

~~According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot~~

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**Interview with John Tanner, Director ~~Chief~~, Voting Section, Civil Rights Division,  
U.S. Department of Justice**

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake phone logs; data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses looks only onat systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, have made it so now the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do

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with the complaint, the section errs on the side of referring it criminally to avoid having any ~~because they do not want civil litigation to complicate a possible criminal case.~~

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

#### Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the ~~voting~~ Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never

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formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

#### Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Note: We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section

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attorney who is observing elections at poll sites on Election Day is required to submit.  
Mr. Tanner would not discuss any current investigations or cases the section is involved  
in.





U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

The Honorable Rush Holt  
1019 Longworth Building  
Washington, DC 20515

**Via Facsimile Transmission ONLY**  
**202-225-6025**

RE: October 16, 2006 Letter

Dear Congressman Holt:

Your letter of October 16, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

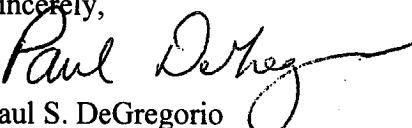
In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

  
Paul S. DeGregorio  
Chairman

SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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**Voter Suppression & Intimidation:**

- Voter suppression efforts are sometimes racially based, and sometimes based on partisan considerations
- Hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. Many instances of what some people refer to as voter intimidation are more unclear now (e.g.; photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera). It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation
- The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.
- Some advocates assert that, given the additional resources and latitude given to the DOJ enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.
- Examples:
  - spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures, such as claiming that if you do not have identification, you cannot vote, and providing false dates for the election
  - Observers with cameras, which people associate with potential political retribution or even violence
  - Intimidating police presence at the polls
  - open hostility by poll workers toward minorities (racial and language), or poll workers asking intimidating questions;
  - groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;
  - challenges
    - There are cases where challenger laws have been beneficial and where they have been abused (Brennan is currently working on developing a model challenger law)
    - No way to determine whether a challenge is in good or bad faith, and there is little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.
    - Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation
  - instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.(AR, KY)
  - moving poll sites
  - having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters
  - intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue. (AR)

**Fraud in Voting:**

*NOTE: Many interviewees appear to have made claims regarding the quantity and type of voting fraud based on incomplete data, their personal experience, or their impressions (e.g.; voting fraud*

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SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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*has been confined to absentee ballots; there is no in person assumption of others' voter identities to vote).*

- The most commonly cited example of voting fraud mentioned was absentee ballot fraud (e.g.; vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and union leaders getting members to vote a certain way by absentee ballot).
- Many assert that impersonation, or polling place fraud, is probably the least frequent type because:
  - impersonation fraud is more likely to be caught and is therefore not worth the risk
  - unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice
  - if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered
  - one half to one quarter of the time the person will be caught (there is a chance the pollworker will have personal knowledge of the person, Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well).
  - deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work
- Vote buying still occurs and, in some cases, it is hard to distinguish between intimidation and vote buying.
- Tampering with ballots in transit between poll and election office is a concern (AR)

**Voter Registration:**

- Some assert that registration fraud is the major issue (esp unsupervised voter registration drives by political parties and advocacy groups that pay workers to register voters)
- Some assert that various groups abuse the existence of list deadwood to make claims about fraudulent voting.
- Some assert that when compiling such lists and doing comparisons, which are used as the basis for challenges, sound statistical methods must be utilized, and often are not. Matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that's simply the nature of database work. Private industry has been working on improving this for years.
- If someone is on a voter list twice, that does not mean that voter has voted twice.
- Many problems will be addressed by the statewide database required under HAVA

**Enforcement:**

- States vary in their authority to intervene in and track voter intimidation-voter suppression and voting fraud cases (e.g.; in AR, enforcement is the responsibility of counties, in IN it is responsibility of State AG).
- Voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive
- Some believe that voter suppression matters are not pursued formally because often they involve activities that current law does not reach.
- Only two interviewees assert that current state and federal codes seem sufficient for prosecuting fraud, and are not under-enforced (no need for additional laws).
- Some advocacy groups assert that the government does not engage in a sustained investigation of voter suppression matters or pursue any kind of resolution to them. There is a perception that the Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud, and that choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are.
- Some advocates point out that, once the election is over, civil litigation becomes moot.

SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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- The development of a pre-election challenge list targeted at minorities (some claim this has never been pursued, yet Mr. Tanner said the DOJ was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama), long lines due to unequal distribution of voting machines based on race, list purges based on race, unequal application of voter ID rules, and refusal to offer a provisional ballot on the basis of race would be VRA violations.
- DOJ asserts there is a big gap between complaints and what can be substantiated
- DOJ Voting Rights Section - Federal Voting Rights Act only applies to state action, so the section only sues State and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case
- DOJ Election Crimes Branch – DOJ is permitted to prosecute whenever there is a candidate for federal office, but can't prosecute everything. Deceptive practices that are committed by individuals and would be a matter for the Public Integrity Section; local government would have to be involved for the voting section to become involved. The problem is asserting federal jurisdiction in non-federal elections. (In U.S. v. McNally, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" McNally, did not include voter fraud.)
- It is preferable for the federal government to pursue these cases for the following reasons:
  - federal districts draw from a bigger and more diverse jury pool;
  - the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;
  - DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;
  - DOJ can use the grand jury process as a discovery technique and to test the strength of the case.
- Some assert that election crimes are not high on the priority list of either district attorneys or grand juries; therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury.
- Political parties have devoted extraordinary resources into 'smoking out' fraudulent voters

**Recommendations Re Laws & Procedures:**

- It is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be.
- Support Senator Barak Obama's bill for combating voter harassment and deceptive practices. (Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.)
- Support a new law that allows the DOJ to bring civil actions for suppression that are not race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.
- Support a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce (DOJ has drafted such legislation, which was introduced but not passed in the early 1990s.)
- Put stronger teeth in the voter fraud laws; step up enforcement against fraud and provide stiffer penalties as current penalties make the risk of committing fraud relatively low
- There should be increased resources dedicated to expanded DOJ monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.
- Some advocate that all election fraud and intimidation complaints should be referred to the State Attorney General's Office to circumvent the problem of local political prosecutions. The

SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes

- Some advocate greater resources for district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution
- Would be useful to have recommendations for prosecutors investigating fraudulent activity
- Better trained poll workers
- Polling places should be open longer, run more professionally but there needs to be fewer of them so that they are staffed by only the best, most professional people (Voting Centers).
- Move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- A day should be given off of work without counting as a vacation day so that better poll workers are available.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Many assert that the best defense against fraud will be better voter lists.
  - States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle
  - Linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice
  - New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters; purging must be done in a manner that uses the best databases, and looks at only the most relevant information
  - The process for preventing ineligible ex-felons from casting ballots needs to be improved
  - statewide registration databases should be linked to social service agency databases
- Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse. (KY has list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge) Last minute challenges should not be permitted
- False information campaigns should be combated with greater voter education, the media could do more to provide information about what is legal and what is illegal
- Improve the protective zone around polling places: the further vote suppressers can keep people away from the polls, the better.
- States should be encouraged to:
  - codify into law uniform and clear published standards for voter registration, challenges, voter ID, poll worker training, use and counting of provisional votes, the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access
  - standardize forms
  - modify forms and procedures based on feedback from prosecutors
- Ensure good security procedures for the tabulation process and more transparency in the vote counting process
- Conduct post-election audits
- Many advocate eliminating "no excuse" absentee voting.
- Some recommend reducing partisanship in election administration, but others are skeptical of the feasibility of this

**SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY**

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- Some strongly recommend requiring voter ID, while others strongly oppose it as a voter suppression tactic, asserting that states should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.) and that states could use signature comparisons.
- Political parties should monitor the processing of voter registrations and purging of registered by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists or to challenge, unlawful purges and other improper list maintenance practices.

**Future Study Recommendations:**

- Just because there was no prosecution, does not mean there was no vote fraud; very hard to come up with a measure of voter fraud short of prosecution
- EAC should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data
- EAC should work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys
- EAC should talk to private election lawyers

**1. Everyone does not define voting fraud and voter intimidation the same way.**

In some cases, what may have been honest administrative mistakes or errors due to poor poll worker training are lumped together with genuine voter suppression efforts and labeled as voter intimidation or voting fraud. Examples: (1) many authors consider certain voter suppression tactics to be voter intimidation that do not rise to the definition used in criminal enforcement of election crimes; (2) some charge that a DOJ ballot integrity measure in South Dakota was voter intimidation; and (3) some mistakes made in the maintenance of voter registration lists are labeled as fraud.

**2. There seems to be no systematic *nationwide* study that reports all (or most) verified instances of voting fraud and voter intimidation or suppression efforts in a particular election or a particular period in U.S. history.**

Some sources focus on certain areas of the country, which can bias the study if these areas are more or less susceptible to fraud and suppression. Some focus on the alleged (but not necessarily verified) misdeeds of one political party or another. Still others focus on unverified allegations reported to a toll-free phone line. In some cases, it is not clear if the incidents were intentional voter suppression or genuine poll worker mistakes (e.g.; not providing provisional ballots or in appropriately asking voters for ID). Minnite's study is as close as they get to a systematic study.

**3. There are a number of obstacles to gathering complete data on voting fraud and voter intimidation/suppression nationwide in any election.**

Authors often have limited resources (time and money) to collect such information. Investigation and prosecution of voting fraud and voter intimidation or suppression occurs at different levels of government (Federal, state and local). These investigations and prosecutions are not reported to and recorded by a central authority. Some voting fraud is inherently more difficult to identify and to prove than others (e.g.; impersonation of another voter at the polls is more difficult, due to the transient nature of some jurisdictions and the fact that impersonators not identified as a fraud at the polls are hard to identify later, than voter registration, vote buying, and absentee ballot fraud). At least some voting fraud and voter intimidation appears to go unreported and uninvestigated, and some prosecutions are unsuccessful due to local politics and law enforcement affiliations and the lack of sufficient resources at the Federal, state, and local levels to support the labor intensive effort.

**4. Most sources seem to agree that voter registration and absentee balloting fraud are the most common forms of voting fraud. Absentee ballot fraud often is accompanied by vote buying or voter coercion. Also frequently alleged were instances of ineligible voters (usually felons, but sometime non-citizens, under aged individuals, or non-residents) that voted. But not all agree that these are the only common forms of fraud.**

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Some contend that voting in the name of another at the polling place is common, but that such instances are extremely hard to prove. Most instances of ineligible voters voting were linked to improper voter list maintenance or confusion on the part of local election officials as to state law on felon disenfranchisement.

**5. A number of sources have identified numerous instances of attempted voter suppression, but no instances of voter intimidation that could be prosecuted under Federal criminal laws is alleged.**

Examples of voter suppression efforts include: (1) phone calls and mailings deliberately directing targeted voters to vote on the wrong day or to go to the wrong polling place, or that provide incorrect and threatening information about the voter qualifications and legal consequences of voting; (2) targeted, inappropriate challenges to voters at the polls or shortly before election day; (3) people posing as law enforcement agents at targeted polling places. When such tactics target minority communities, they may be attacked through civil action by DOJ under Voting Rights Act provisions, but they do not qualify for criminal penalties under Federal voter intimidation law. Currently, there is no Federal election law providing criminal penalties for voter suppression efforts. When the suppression adversely affects a political party, but does not have a racial component, DOJ may be hard pressed to pursue the matter unless other Federal criminal law has been violated (e.g.; suppression of phone banks in New Hampshire).

**6. Unsupervised voter registration drives by political parties and advocacy groups are a primary source of fraudulent voter registration applications and missing (perhaps deliberately) voter registration applications.**

The practice of paying persons to man voter registration drives (particularly, but not only, when the person is paid by the head) is a frequent source of fraudulent voter registration applications. Partisan drives have resulted in applications from persons of "the wrong party" being held back or destroyed. Therefore, while the applicant believes they have registered, the election official has no record of that registration.

**7. Many authors contend that proper implementation of the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA) will reduce or at least not increase the potential for fraud and voter suppression, but some argue that provisions in these laws increase the likelihood of fraud or voter suppression.**

Many argue that proper implementation of the list maintenance and fail-safe voting provisions of the NVRA and HAVA's requirements for the statewide voter registration list, voter ID for certain first-time voters, and provisional voting will reduce the potential for voting fraud and voter intimidation. Others argue that the list maintenance provisions of NVRA cause "dead wood" to be left on the voter rolls, providing opportunity for fraud, or that HAVA's voter ID and list matching requirements can be used as voter suppression tactics.



EAC-LESSONS LEARNED FROM LITERATURE RESEARCH  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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- 8. Proper recordkeeping and post-election auditing is an important key to identifying and preventing voting fraud, and for subsequent prosecution of such activities; but is not being done consistently.**
- 9. Poll worker recruitment and training is a key component to combating actions that are perceived as suppressing or intimidating voters.**
- 10. Both sides on election reform debates are using incomplete data to bolster their arguments.**

Margaret Sims /EAC/GOV  
10/19/2006 07:04 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Tamar  
Nedzar/EAC/GOV@EAC  
cc twilkey@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Voter Fraud-Voter Intimidation Draft Report

Attached is a copy of the draft voter fraud-voter intimidation report that combines all of the pieces provided to me by the consultants, except for the voluminous Nexis research and case law charts. Tom wants to get this before the Commissioners ASAP, but I need some other eyes to look it over before we do. Although I've made some formatting changes to provide some consistency in presentation, and corrected a couple of glaring errors, I remain concerned about a number of issues:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.
- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper sequeways. I don't know if we should leave it as is, or insert them where needed.

Please let me know what you think. If it would help, we can schedule a teleconference. --- Peggy



VF-VI Final Rept-draft 10-19-06.doc

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**Voting Fraud and Voter Intimidation**

**Report to the**  
**U.S. Election Assistance Commission**  
**on**  
**Preliminary Research & Recommendations**

**By**  
**Job Serebrov and Tova Wang**

030723

**Deliberative Process  
Privilege**

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## **Introduction**

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

**Existing Literature:** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

**Cases:** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

## Working Definition of Fraud and Intimidation

Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.

*what does this mean?*  
Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote; *knowledge is not an*
- voting by non-citizens who know they are ineligible to do so; *element*
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

*who?*

*who?*

*don't know  
that's not a crime*

*malfeasance  
malfeasance*

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

DRAFT



## Summaries of Research Conducted

### Interviews

#### *Common Themes*

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

*What does this mean?*

*Not Fraud*

*DOJ disputes*

implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

**Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

*These are criminal matters*

- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states’ office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **Nexis Research**

### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### ***Voter Registration Fraud***

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### ***Voter Intimidation and Suppression***

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### ***“Dead Voters and Multiple Voting”***

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### ***Vote Buying***

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### ***Deceptive Practices***

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### ***Existing Research***

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)



- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross-reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

#### *1. Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## 2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity**  
**on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews*** X

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>i</sup>

Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research*** X

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review*** X

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline*** X

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

**Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice**

✓ CRIMINAL DIVISION

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

**Recommendation 6: Review Reports Filed By District Election Officers**

✓

Similarly, the consultants believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

**Recommendation 7: Attend Ballot Access and Voting Integrity Symposium**

✗

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity



Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research*** ✓

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.<sup>v</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

7. MAYBE BUT TOO SOON TO TELL

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### **Working Group Recommendations**

#### ***Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections*** X

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

**Recommendation 2: Do a Study on Absentee Ballot Fraud**

X ALL OR NOTHING

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

**Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>**

? PROBABLY NOT WOULD NOT SERVE OUR PURPOSES

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

**Recommendation 4: Conduct Research Using Database Comparisons**

NOT OUR PLACE

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

**Recommendation 5: Conduct a Study of Deceptive Practices**

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

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groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

**Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation**

POSSIBLE,

The EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

**Recommendation 7: Examine the Use of Special Election Courts**

X NOT OUR PLACE AT THIS TIME  
① THING AT A TIME.

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

DRAFT

## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud, when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”

**NEXIS Charts**

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Case Charts

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

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**Appendix 2**  
**List of Literature Reviewed**

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Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

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#### **Books**

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

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### **Appendix 3**

## **Excerpt from “Machinery of Democracy,” a Brennan Center Report**

### **APPENDIX C**

#### **BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR**

**Excerpted from pp. 8-19**

### **METHODOLOGY**

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker’s point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

### **IDENTIFICATION OF THREATS**

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.<sup>20</sup> Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

### **PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.<sup>21</sup>

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work, and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.**<sup>27</sup>

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.**<sup>28</sup>

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling



place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

**NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION**

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20–27.

#### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography<sup>34</sup> to hide attack instruction files (*see* "DRE w/ VVPT Attack No.1a", discussed in greater detail, *infra* at pp. 62–65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85–91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team. Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77–83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## **EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS**

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## **COUNTERMEASURES EXAMINED**

### **BASIC SET OF COUNTERMEASURES**

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the “ITA”).<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room, in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of “tamper evident” seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

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- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

#### Testing<sup>39</sup>

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

#### **REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.**

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

### **The Audit**

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.<sup>43</sup>
- Using a highly transparent random selection mechanism (*see* point ii, below), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

### **Transparent Random Selection Process**

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.

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If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;<sup>44</sup>
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

#### **REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES**

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

#### **Parallel Testing**

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.<sup>45</sup> In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;<sup>46</sup>
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

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- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

### **Transparent Random Selection Process**

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

## **APPENDIX C**

### **ALTERNATIVE SECURITY METRICS CONSIDERED**

#### **Dollars Spent**

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

#### **Time of Attack**

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.



**Appendix 4**  
**Voting Fraud-Voter Intimidation Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law  
Leader of Election Protection Coalition

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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- <sup>i</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R
- <sup>ii</sup> The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12
- <sup>iii</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.
- <sup>iv</sup> "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005
- <sup>v</sup> Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29
- <sup>vi</sup> Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29

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**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY**

**INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

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EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

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<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

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fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

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- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

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“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### **Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

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**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

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voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to

vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

***Acts of Coercion***

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

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- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

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- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

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***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

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***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

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### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition 0787

of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

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areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

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TAMAR's comments

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

voter ~~voting~~ INTRODUCTION

Voting fraud and intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun ~~this phase~~ <sup>one</sup> of a comprehensive study on election crimes. In ~~this~~ phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in ~~this country~~ the United States

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct ~~that type of extensive research~~ <sup>that type</sup> of research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,<sup>1</sup> who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic ~~and~~ <sup>the need</sup> to assure a bipartisan representation in this study. The consultants and EAC staff were charged ~~to~~ <sup>to</sup> (1) research the current state of information on the topic of voting   
 with

<sup>1</sup> Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

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fraud and voter intimidation; (2) develop a uniform definition of voting fraud and voter intimidation; and (3) propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican  
Campaign Committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and intimidation, as well as summaries of the interviews ~~that they~~ conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

*the consultants*

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

### **Reports and Studies of Voting fraud and Intimidation**

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.



- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

### Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement <sup>concerning</sup> what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, ~~over~~ <sup>including</sup> legal practices, that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. <sup>For example,</sup> a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

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**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**

Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**

Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**

Commissioner of Elections,  
Pennsylvania

**Tony Sirvello**

Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Sandler**

Counsel  
Democratic National Committee

**John Ravitz**

Executive Director  
New York City Board of Elections

**Sharon Priest**

Former Secretary of State, Arkansas

**Kevin Kennedy**

Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**

Justice  
Supreme Court of Ohio

**Joseph Rich**

Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**

Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**

Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered, the stiff penalties associated with this type of fraud, and ~~it~~ it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

### **Case Law and Statutes**

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms, <sup>EAC defines</sup> ~~to form a definition of~~ “voting fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter

registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

### **The Definition of an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to, qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

### *Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely; or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote; requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

### *Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint; or inflicting, threatening to inflict; or causing to be inflicted damage harm; or loss; upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other things of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;



- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

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- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

## **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

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***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### **Accepted Recommendations**

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### ***Survey Chief Election Officers Regarding Administrative Complaints***

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition

of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from

areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.



**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY**

Comment [M1]: HAVA §241(b)(6) refers to voting (rather than voter) fraud and 241(b)(7) refers to voter intimidation. Do we want to do a global change from voter fraud to voting fraud, or leave it as is?

**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and at times even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, EAC has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation, listed in §§241(b)(6) and (7), were topics ~~was a topic~~ that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That type of research is well beyond the basic understanding that had to be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Tova Wang and Job Serebrov, who along with EAC staff and interns conducted the research that forms the basis of this report. ~~The c~~ Consultants were chosen based upon their experience with the topic and ~~In addition, consultants were chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged to: (1) to research the current state of information on the topics of voter fraud and voter intimidation; (2) to develop a uniform definition of voter fraud and voter intimidation; and (3) to propose recommended strategies for researching this subject.~~

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Comments*

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, relevant cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited to produce this final report.

**Comment [M2]:** The consultants did not really summarize existing law.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. What the world knows about these issues comes largely from a very limited body of reports, articles and books.

There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### **Reports and Studies of Voter Fraud and Intimidation**

Over the years, there have been a number of studies and reports published conducted about ~~the concepts of~~ voter fraud and voter intimidation. EAC consultants reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_\_”:

#### **Articles and Reports**

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.

- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," *Demos: A Network of Ideas and Action*, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### **Books**

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Foiled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation in the U.S. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally, speaking there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation and even legal practices that they allege suppress the vote.

One point of agreement is that absentee voting and voter registration by ~~third-party~~ nongovernmental groups has created opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with voters of a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

**Comment [M3]:** The term "third-party" is often used for minor political parties. As most of the voter registration drive problems have involved major party operatives and advocacy groups, "nongovernmental" seems a better choice.

### Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Pat Rogers**  
Attorney, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**William Groth**  
Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Lori Minnite**  
Barnard College, Columbia University

**Stephen Ansolobhere**  
Massachusetts Institute of Technology

**Neil Bradley**  
ACLU Voting Rights Project

**Chandler Davidson**  
Rice University

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered, and that there are stiff penalties associated with this type of fraud, and that it was an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction. They can only prosecute election crimes related to elections with a federal candidate on the ballot and those committed by a public official under color of law involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement. ~~Some including those that allege that prosecutions are not sufficiently aggressive. Others and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.~~

A summary of the each of the interviews conducted is attached as Appendix “ \_\_\_ ”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “ \_\_\_ ”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and



- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Comment [M4]: Sic? Or is this a typo?

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person

who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voter fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voter fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voter fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voter fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

#### What is an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception; acts of coercion; acts of damage or destruction; and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

**Comment [M5]:** So this means that we will not look at civil actions involving Voting Rights Act violations, right?

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states ~~and~~ or the federal government consider criminal activity related to elections.

***Acts of Deception***

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

***Acts of Coercion***

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications that are necessary for the applicants to exercise their right to vote;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

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***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;

- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal es-or civil violations related to campaign finance contribution limitations and prohibitions, as well as reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. The federal agency responsible for administering federal campaign finance law and monitoring the status of state campaign finance law is the Federal Election Commission (FEC).

**Comment [M6]:** Do we want to restrict our study to election crimes that affect federal elections only? HAVA §241(b)(6) specifically refers to “Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office” [Emphasis added.] That would mean we would also stay away from election crimes affecting ballot issues and elections with no federal candidate on the ballot.

Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

**RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety ~~in~~of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud

and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and

concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons are noted as having actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.



### Accepted Recommendations

There has never been a comprehensive national study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### *Survey Chief Election Officers Regarding Administrative Complaints*

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish to as a part of complying with HAVA §402. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official and these complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have

identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

### CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

**Comment [M7]:** Need to include survey of laws and procedures used to ID and prosecute election crime.

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

**Comment [M8]:** Need to include survey of laws and procedures used to ID and prosecute election crime.

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***

**Comment [M9]:** Would this include the verification of information about current federal and state laws and procedures that may be used to pursue violations? We would need this information in order to better understand the data we collect.

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter

EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

400000

Deliberative Process  
Privilege

**Articles**

People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective.

Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. **Examples include:**

- Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election;
- the 2004 Florida felon purge list;
- the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country;
- the use of challengers in minority districts in many locations;
- the challenge to the right of African American students to vote in Texas in 2004;
- the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003;
- the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and
- the FBI investigation into thousands of Native American voters in South Dakota in 2002.

Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

Argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes." Blames the federal government as well as the states for use of suspect ballot security programs. McDonald cites several ballot security efforts that were really disguised attempts at minority voter suppression:

- SD-DOJ "voting integrity initiative".
- AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.
- MI - "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout
- SC – one county's officials instituted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address (disproportionately affecting African Americans).
- the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux's race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection.

States that HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security

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**programs** (especially voter ID). Indicates that the crux of the problem is **law enforcement of federal voters rights laws** ("there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordville [Arkansas].")  
Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. **In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day** (all but dead voters were forwarded to appropriate district attorneys for investigation). Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards to those registering to vote on Election Day in November 2004. Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations. To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- 71.4 % sometimes or always notified registered voters before removing their names; and
- 54.0 % reported removing the names of ineligible felons.
- registration lists contain duplicate records and the names of ineligible individuals (e.g.; more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality).

### Recommendations:

- adjust the early registration deadline to provide clerks more time to prepare registration lists;
- establish more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;
- establish uniform requirements for demonstrating proof of residence for all registrants;
- provide municipal clerks with more flexibility in the use of address verification cards;
- Authorize civil penalties for local election officials and municipalities that fail to comply with election laws; and
- implement mandatory elections training requirements for municipal clerks.

Report also recognized that the new **HAVA registration procedures would help with existing registration problems.**

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Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- **evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.**
- **more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);**
- **persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,**
- **the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)**

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation also found:

- **persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted.**
- **more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.**
- **same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).**
- **the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.**

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National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- **There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.**
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists.** Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. There were **reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.**
- **Vote by mail raises concerns about privacy**, as citizens voting at home may come under pressure to vote for certain candidates, and it **increases the risk of fraud.**
- **While election fraud is difficult to measure, it occurs.** The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges for multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and in convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens.** In addition to the federal investigations, **state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.**
- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use **"REAL ID" cards for voting purposes.**
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized**

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**version of the signature that the election administrator maintains.** While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

- Each **state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each **state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- In addition to the penalties set by the Voting Rights Act, it **should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.**
- **To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.**
- **States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration.** After that, challengers will need to defend their late actions. **On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.**
- **State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials.** The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should **consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.**
- Nonpartisan structures of election administration are very important, and **election administrators should be neutral, professional, and impartial.**
- No matter what institutions are responsible for conducting elections, **conflict-of-interest standards should be introduced for all federal, state, and local election officials.** Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential

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election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

### Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the **Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification** – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. **The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.**
- In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the **incidence of individual voter fraud at the polls is negligible**. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.
- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny**. This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

### Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud **by individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives**. The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll–will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons**. In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the

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percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)

- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.
- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

**Recommendation on Database Information Sharing Across States -serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

**Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). Noteworthy characteristics of these programs:

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions,** these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners** containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.
- sometimes **false information about voting qualifications** is sent to minority voters through the mail."
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists** and challenging voters at the polls,

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started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

**Some of the features of vote suppression efforts** put forth by Republicans under the guise of ballot security programs:

1. **An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**
2. **Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;**
3. **Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;**
4. **Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;**
5. **Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;**
6. **Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;**
7. **Photographing, tape recording, or videotaping voters; and**
8. **Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.**

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He **suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud.** Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

### Major Conclusions:

1. **Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
2. **Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at

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least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting [ it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as “Unlawful operation of vending machines,” “Misrepresentation of tobacco leaf weight,” and “Racing horse under false name.”)

3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present /** in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.
4. **Disenfranchisement results in contradictory policies within states (the “crazy-quilt” pattern of disenfranchisement laws exists even within states /** Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the “moral turpitude” that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:** The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:** No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice:** Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

### Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. **Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:** More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility. More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:** Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

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4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity: First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the "purity" of the ballot box. Second, because they are all but invisible in the sentencing process, "collateral" sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely "visible" even to the people running American elections. Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions:** State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials:** Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials:** Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote – state policymakers should review such policies to determine if they serve a useful public purpose.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying.** This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.

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- **States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot.** Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- **States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.**
- **States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act ("HAVA") and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.**
- **States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.**
- **States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.**
- **States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors.** Legislation should require those organizations obtaining a voter's registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter's registration and fails to deliver it to election authorities.
- **States should adopt legislation prohibiting "bounty" payment to voter registration solicitors based on the number of registration cards they collect.**

### The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001

Written after the 2000 election, thesis of report is that **structural disenfranchisement**—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes "bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights." Blame for structural disenfranchisement is laid squarely at the feet of **states and localities that "shirk their responsibilities or otherwise manipulate election systems," resulting in voters "either turned away from the polls or their votes are thrown out."** Data and conclusions in the Report are taken from **eight sample case studies** of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City-in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia-the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia-registration problems kept an untold number from voting; Chicago-in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis-thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida-a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas-significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: "ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills."

#### Findings:

- election directors lack the resources to effectively do their jobs and some lack the "ability or will to force local election officials to fix serious

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problems”;

- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

### Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value.** For example, middle initials were ignored throughout all counties, so that “J \_\_\_\_\_ A. Smith” was presumed to be the same person as “J \_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B \_\_\_\_\_ Johnson” and “B \_\_\_\_\_ Johnson, Jr.” – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;
- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P \_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P \_\_\_\_\_ S. Rosens, born on the same date in 1948 – and

such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey's registration rolls**. It is well known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, **the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.**

Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings considered related to EAC study:

- **Statewide, 6 %of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 %of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally.** Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did not provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37% reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification. African American voters statewide were 47% more likely to be required to show identification than white voters. Indeed, 61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting: 3% of voters who went to the polls left their polling places and did not return due to the long lines; statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes; overall, 20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- adopt legislation to **make clear and uniform the rules on voter registration.**
- adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access
- improve **training of official poll workers**
- adopt **clear and uniform rules on the use of, and the counting of, provisional ballots**, and distribute them for public comment well in advance of each election day
- not adopt requirements that voters show identification at the polls, beyond those already required by federal law; **vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**



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- **make voter suppression a criminal offense at the state level**, in all states
- **implement statewide voter lists** in accordance with the Help America Vote Act ("HAVA")
- **expend significantly more resources in educating voters on where, when and how to vote.**
- **partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

**Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

**Voting Fraud:**

During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

**Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

**District Election Officer Program:**

The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

**Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

### **Four situations where federal prosecution is appropriate:**

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

### **Four advantages to federal prosecution:**

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these cases on;
2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level - local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

### **Four questions used by prosecutors in evaluating the credibility of election complaints:**

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

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Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

**Voter Intimidation and Suppression Stories (Abridged):**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct.**
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away.** The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a **Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters.** Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. **There was one other black voter in line who was also singled out for same treatment while white voters were not.**
- The Election Protection hotline received reports from **Pinellas County, Florida** that **individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."**
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her **sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.**
- **An illiterate, older and disabled voter in Miami-Dade** asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that **flyers are circulating in a black community in Lexington, South Carolina claiming they those who are behind on child support payments will be arrested as the polls.**
- **Minority voters from Palm Beach County, Florida** reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that **two illiterate voters in Michigan** requested assistance with their ballots but were refused and **reportedly mocked by poll workers.**
- The hotline received a call from a radio DJ in **Hillsborough County, Florida**, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.

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- The hotline received a call from **Pima County, Arizona**, indicating that **Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location**. Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama** claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.
- Poll monitors in **Philadelphia** reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahoga, Ohio**, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, **suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote —** were traced to the Republican headquarters in the **Eastern Panhandle**. On **Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter**. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona** a **misleading call informing voters that they should vote on November 3** has been traced back to the state GOP headquarters. The FBI is investigating.
- **A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit**, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from **individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd**.
- In **Massachusetts**, the EP Hotline has received a report that a **radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets**.
- In **Richland, South Carolina** Election Protection has received a report of a **poll manager turning away individuals who do not have photo ID issued to the county or a driver's license**; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville**, a caller reported that a **white poll worker was asking Blacks for multiple form of I.D.** Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking flyer advises **Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3**
- The week before the election, **flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time."** The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that **"If you violate any of these laws you can get ten years in prison and your children will get taken away from you."**
- There is a **Jefferson County flyer which tells voters "See you at the Poles[sic]"... on November 4.**

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"

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Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSES THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]** This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. The Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, **Minnite shows that many allegations of fraud do not end up being meritorious.** Minnite finds that **available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes.** Election officials generally do a very good job of protecting against fraud. **Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology.** There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud. Election

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fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

**Suggested reforms to prevent what voter fraud does take place:**

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.
- 6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - "If you already voted in any election this year, you can't vote in the Presidential Election."
  - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity:** Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters:** Arizona, Missouri
3. **Intimidating and harassing challengers at the polls:** Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and**

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other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas

5. **Refusal to provide provisional ballots to certain voters:** Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed:** Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship:** Arizona
9. **Police officers at the polls intimidating voters:** Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

**Books**

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

**Absentee balloting makes it even worse:** someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations.** Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.**

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots.** However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount



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and types of voter fraud and voter intimidation occurring.
Tracy Campbell, <i>Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004</i> , Carroll & Graf Publishers, 2005.
Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]
David E. Johnson and Jonny R. Johnson, <i>A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush</i> , Taylor Trade Publishing, 2004.
<b>Adds almost nothing to the present study.</b> It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.
Mark Crispin Miller, <i>Foiled Again</i> , Basic Books, 2005.
Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and <b>alleged malfeasance</b> in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including: <ol style="list-style-type: none"> <li>1. <b>deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;</b></li> <li>2. <b>misinterpretation of voting laws by elections officials to the detriment of Democratic voters;</b></li> <li>3. <b>dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;</b></li> <li>4. <b>machine irregularities in Democratic jurisdictions;</b></li> <li>5. <b>relocating polling sites in Democratic and minority areas;</b></li> <li>6. <b>suspicious mishandling of absentee ballots;</b></li> <li>7. <b>refusing to dispense voter registration forms to certain voter registration groups;</b></li> <li>8. <b>intimidation of students;</b></li> <li>9. <b>suspicious ballot spoilage rates in certain jurisdictions;</b></li> <li>10. <b>“strategic distribution of provisional ballots,” and trashing of provisional ballots;</b></li> <li>11. <b>harassment of Native American voters;</b></li> <li>12. <b>a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;</b></li> <li>13. <b>illegitimate challenges at the polls by Republican poll watchers;</b></li> <li>14. <b>improper demands for identification in certain areas;</b></li> <li>15. <b>Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;</b></li> <li>16. <b>wrongful purging of eligible voters from voting rolls;</b></li> <li>17. <b>partisan harassment;</b></li> <li>18. <b>the selective placement of early voting sites; and</b></li> <li>19. <b>failure to send out absentee ballots in time for people to vote.</b></li> </ol> Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles

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for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

**The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.**

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

**Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo** Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

**The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.**

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

**And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.**

**In-person voter-identity fraud is notoriously difficult to detect and investigate.** In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. The problem is only exacerbated by the increasingly transient nature of society. **Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994.** See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on

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Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. See Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.

The Crawford Plaintiffs cite the concessions by Indiana Election Division Co-Director King and the Intervenor-State that they are unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana. They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*Id.*)

While common sense, the experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.

At the level of logic, moreover, it is just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana. So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ex. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that **there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .**

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had

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received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

**There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.**

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417 .

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office .

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before

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the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

**Overview:** Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

**Factual Analysis:** The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

**Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure.** In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

**Election Official Misconduct:**

- A person commits Election Official misconduct if while an election official the person:
  - Intentionally fails to perform an election duty, or knowingly does an unauthorized act with the intent to effect the election.
  - Knowingly permits, makes, or attempts to make a false count of election returns.
  - Intentionally conceals, withholds, or destroys election returns or attempts to do so.
  - Opens a ballot received from a voter at an election, unless otherwise permitted.
  - Marks a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time.
  - Otherwise attempts to learn how a voter marked a ballot.
  - Distributes or attempts to distribute election material knowing it to be fraudulent.
  - Knowingly refuses to register a person who is entitled to register under the rules of that jurisdiction.

**Petition Subscription:**

- A person commits a crime of improper subscription to a petition or referendum if:
  - He signs a name other than his own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office.
  - Knowingly signs more than once for the proposition, question, or candidate at one election.
  - Signs a petition proposing an initiative or referendum while knowingly not being a qualified voter.
  - Solicits, accepts, or agrees to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative.

**Campaign misconduct:**

- A person commits a crime of campaign misconduct if he knowingly makes a communication:
  - Containing false factual information relating to a candidate for an election that the person knows to be false and that a person could reasonably construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office.
  - Knowingly removes, alters, defaces or covers any political sign of any candidate for public office for a prescribed period prior to and following the election.

**Unlawful Interference with Voting:**

- A person commits the crime of unlawful interference with voting when the person:

- Uses, threatens to use, or causes to be used force, coercion, violence, restraint, or inflicts, threatens to inflict, or causes to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting.
- Knowingly pays, offers to pay, or causes to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate at an election or for an election proposition or question.
- Has an official ballot in possession outside the voting room, unless the person is an election official or other person authorized by law or local ordinance.
- Makes, or knowingly has in possession, a counterfeit of an official election ballot.
- Knowingly solicits or encourages a registered voter who is no longer qualified to vote in an election.
- Fraudulently alters or changes the vote of any elector, by which such elector is prevented from voting as he intended.
- Knowingly causes to be mailed or distributed, or knowingly mails or distributes, literature that includes a designation of the voter's precinct polling place other than a precinct polling place listed for that voter in an official precinct polling list that constituted the latest official precinct polling list.
- Knowingly challenges a person's right to vote without probable cause or on fraudulent grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting.
- As an employer, attempts by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot.
- Removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to prepare his or her ballot.
- Removes, tears down, or defaces the cards printed for the instruction of voters.
- Removes, tears down, marks or otherwise defaces any voter index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of an voter, or the fact that a voter has or has not voted.

*Voter Reg  
Prives*

**Voter Misconduct**

- A voter commits voter misconduct if the person:
  - Votes or attempts to vote in the name of another person or in a name other than person's own.
  - Votes or attempts to vote more than once at the same election with the intent that the person's vote be counted more than once.
  - Intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by a statute regarding their voting status.
  - Knowingly solicits a person to vote after the polls are closed with the intent that the vote be counted.

- Registers to vote without being entitled to register.
- Knowingly makes a material false statement while applying for voter registration or reregistration.
- Voters or attempts to vote in an election after being disqualified.

**Unlawful Interference With an Election**

- A person commits the crime of unlawful interference with an election if the person:
  - Induces or attempts to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward.
  - Intentionally changes, attempts to change, or causes to be changed an official election document including ballots, tallies, and returns.
  - Intentionally delays, attempts to delay, or causes to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.
  - Directly or through any other person advances, pays, solicits, or receives or causes to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office.



Margaret Sims /EAC/GOV  
11/13/2006 10:27 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject VF-VI Another DOJ Objection

Julie:

I just remembered that there was one other DOJ objection. It was about the way the consultants described the Election Crimes Branch focus on cases. In the interview with Donsanto (the only interview I attended), he made reference to the fact that the Election Crimes Branch used to only go after conspiracies, not individuals. Now, however, they had begun prosecuting individuals for noncitizen and felon voting. The consultants heard an unexpressed "instead", which would mean that DOJ had dropped pursuing conspiracies in favor of going after individuals. Based on my previous experience, I heard and unexpressed "in addition", meaning that DOJ was not just prosecuting conspiracies, the department also had begun to prosecute individuals.

I had lengthy discussions with the consultants over this issue as well. Donsanto confirmed that he meant "in addition", and the lists of cases he provided indicates that the department continues to pursue conspiracies. (It doesn't make sense any other way, unless you believe that the government is out to get the little guy.) --- Peggy

030856

Margaret Sims /EAC/GOV  
11/07/2006 11:29 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF and VI study

OK, I will get started on the interview summaries today.

DOJ (Donsanto and Tanner) raised objections to the consultants' description of their interviews, which state that DOJ officials agreed they were bringing fewer intimidation and suppression cases. An advocacy group is going after DOJ, accusing the agency of doing just that for political reasons, so this is something DOJ wants corrected.

Apart from the consultants pre-existing bias that "the feds aren't doing enough", a big part of the problem appears to have been a misunderstanding over terminology. When our consultants used the term "intimidation", they included all sorts of suppression activities. When Craig Donsanto used the term "intimidation", he was using the definition under federal criminal vote fraud statutes, which requires the action be accompanied by threat of physical or economic harm. (He told me he has had only one such case in 30 years.) His office is actively pursuing voter suppression activities under statutes other than federal voter intimidation laws (e.g.; the recent case in NH where a campaign operative conspired to block election day GOTV telephone lines of the opposing party). A copy of Tanner's comments on the interview summary in the status report for the Standards and Advisory Boards meetings is attached.

I had many long discussions with Tova and Job about this. I was able to get them to soften their description (see 4th bullet on page 7 of the draft report), but not entirely to my satisfaction. Also, at the Working Group meeting, it was agreed that the consultants would add a note to their definition to clarify that the working definition for purposes of the research includes activities that do not meet the federal definition of voter intimidation. The resulting note on page 5 of the draft report is too vague.

DOJ has not seen everything the consultants put in the draft final report, so they may have additional concerns. For example, the consultants' recommendations include the following:

**Attend the Department of Justice's Ballot Access and Voting Integrity Symposium** . The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices.

Footnote:

By attending the symposium researchers could learn more about the following:  
How DEOs are trained, e.g. what they are taught to focus their resources on; How they are instructed to respond to various types of complaints; How information about previous elections and voting issues is presented; and, How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

DOJ has stated that this is an internal meeting, involving only DOJ officials, US Attorneys and FBI. EAC researchers cannot be admitted without opening the meeting to other outsiders. DOJ does not want to do this, probably for two reasons: (1) confidential information on current enforcement cases may be

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**Deliberative Process  
Privilege**

discussed; and (2) making enforcement strategies public could give unscrupulous individuals a virtual "how to" manual for circumventing such strategies when committing election crimes.

We may also have a hard time gaining access to the DOE reports and the Voting Section records of complaints, as they probably aren't considered public documents.

--- Peggy



DOJ-TannerComments-TW\InterviewSummary.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:47 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: VF and VI study

that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

Subject Re: VF and VI study

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject VF and VI study

030852

Did Tova and Job provide us with summaries or notes of their interviews?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

030859

To: Members of the United States Election Assistance Commission  
Cc: Thomas Wilkey, Executive Director, and Julie Thompson Hodgkins, General Counsel, Election Assistance Commission  
From: Tova Andrea Wang  
Re: Project on Voter Fraud and Intimidation  
Date: December 7, 2006

As one of the consultants and authors of the report on voter fraud and intimidation released by the Election Assistance Commission today, I am writing to request that the EAC restore the information that has been altered and removed from the research report we submitted to the EAC in July, 2006.

Job Serebrov and I spent over a year and hundreds of hours working on the report on voter fraud and voter intimidation in a bipartisan and highly effective manner. The report we wrote was a reflection of the detailed and laborious research we did over these many months. Unfortunately, the report the EAC released today does not fully reflect our research and the report of our findings submitted to the EAC in July, 2006.

After being unable to get any action taken on the report for months, I learned very recently that the General Counsel of the EAC would be taking responsibility for "revising" the report. On November 15 of this year I requested that Job Serebrov and I be permitted to review any revisions or changes made by EAC staff to the draft we submitted. We both offered to work collaboratively and cooperatively with EAC staff to ensure that the document produced was the most informative and useful product possible. This request was denied. Again, on November 29, 2006, upon learning that the report was to become public at an upcoming EAC meeting, I requested in writing that Job Serebrov and I be at least allowed to see embargoed copies of the report to be released before that December 7, 2006 meeting. That request was denied. On December 4, 2006 I offered to sign a confidentiality agreement whereby I would agree not to discuss the report before its public release. That request was also denied.

It is my understanding that with other research reports for which the EAC has contracted consultants there has been a process of give and take between the consultants and the EAC staff and commissioners prior to public release of the report. The consultants in this instance were repeatedly denied that opportunity, leading to today's result.

The issues around voter fraud and intimidation are controversial, making it all the more necessary that the research around it be as free from politics as possible. That is why the EAC made this project a bipartisan effort, with a bipartisan team of consultants and a bipartisan working group to inform and advise us on our work.

The EAC has a statutory obligation to provide the Congress and the American public the best research, data and guidance it can. Knowledge about the extent and nature of voter fraud and intimidation is fundamental to ensuring the right of every eligible American to vote and that every legitimate vote is counted.

030860

**Deliberative Process  
Privilege**

I hope the EAC will reconsider its actions of today and release the report that was written by the consultants so that the Congress and the voters can engage in an informed and honest discussion about one of the most serious issues confronting our democracy today.

Please respond to this request by Monday, December 11. Thank you for your timely consideration.

CONNECTICUT

DELAWARE

## Political Material

- \* NO EMPLOYER SHALL PUT ~~ANY~~ INFO INTO AN EMPLOYEE'S PAY ENVELOPE
- \* EVERY PERSON WHO KNOWINGLY CHALLENGES A PERSON'S RIGHT TO VOTE W/O PROBABLE CAUSE OR ON FRAUDULENT GROUNDS - OR MASS GROUNDLESS CHALLENGING, OR ADVISES SOMEONE FRAUDULENTLY THAT THEY ARE INELIGIBLE TO VOTE IS GUILTY OF A CRIME
- \* ANY PERSON IN POSSESSION OF A FIREARM OR ANY UNIFORMED POLICE OFFICER, GUARD, OR SECURITY PERSONNEL STATIONED IN THE IMMEDIATE VICINITY OF POLLING PLACE W/O WRITTEN AUTHORIZATION OF APPROPRIATE OFFICIALS
- \* ANY PERSON HAVING CHARGE OF A COMPLETED ABSENT VOTER BALLOT WHO WILLFULLY INTERFERES OR CAUSES INTERFERENCE W/ ITS RETURN TO THE LOCAL ELECTION OFFICIALS.

## Colorado

- \* NO NAME SHALL BE ADDED TO THE REGISTRATION BOOK OF ANY PRECINCT AFTER CLOSE OF REGISTRATION.  
- KNOWING ELECTION OFFICIAL WHO CAUSES NAME TO BE ADDED = GUILTY OF CRIME
- \* CAN'T MUTILATE OR ERASE ANY NAME, FIGURE OR WORD IN REGISTRATION BOOK, REGISTRATION LIST, OR POLLBOOK
- \* ELECTION JUDGE CAN'T WILLFULLY OR MALICIOUSLY REFUSE OR NEGLECT TO RECEIVE THE BALLOT OF A REGISTERED VOTER
- \* CAN'T CAUSE THROUGH DECEIT A PERSON TO SUBMIT A DEFECTIVE BALLOT.
- \* DON'T KNOWINGLY VOTE IN WRONG PRECINCT

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- \* Registers to vote w/o being ENTITLED TO
- \* Makes False Statement while Registering

### Arizona

- \* Counterfeiting a Ballot or Circulating a Counterfeited Ballot
- \* Interference w/ Election officials Duties (Knowingly)
- ~~\* Attempts to Fix an Election~~
- \* Coercion or Intimidation (Same as Alaska)
- \* Knowingly Remove, Alter, Deface or Cover up Political Sign of any Candidate for Public Office for Prescribed Period

### Arkansas

- \* Can't Tamper w/ Voting Machines

### California

- \* Persons in charge of Registering Voters may NOT Knowingly Register a False Person or a Person they know to be FRAUDULENTLY Registering
- \* Misuse of Voter Registration Information or obtaining info other than as permitted by law
- \* Can't pay to get someone to become a candidate or withdraw as a candidate
- \* Can't send voters false info about their Polling Place
- \* No Person shall Destroy, Tear Down or Remove Polling Booth, Things w/ Polling Booth.

## Alabama

- \* Vote More Than Once OR Vote When NOT ENTITLED
- \* False IMPERSONATION
- \* Bribe or attempting to BRIBE, INFLUENCE
- \* Buy or offer to Buy Vote
- \* Sell Vote
- \* ALTERING OR CHANGING SOMEONE'S VOTE
- \* DISTURB, PREVENT or ATTEMPT TO PREVENT a Vote
- \* Coercion By an EMPLOYER over Employee
- \* Provide False INFO to Vote or REGISTER to Vote

## Alaska - Anything new?

- \* Election official 1) FAILS TO Perform (non-fessure)  
2) False Count 3) Conceals, WITHHOLDS, DESTROYS, ATTEMPTS: Election Returns  
4) OPENS a Ballot Received w/o Permission 5) MARKS a Ballot (to IDENTIFY IT) 6) ATTEMPS to Learn How a Voter MARKED
- \* PETITION SUBSCRIPTION - Signs wrong name, Paid, Signs Twice
- \* knowingly disseminate INFO that is false that HURTS CANDIDATE'S REPUTATION
- \* Uses, THREATENS TO USE or CAUSES TO BE USED Force, Coercion, Violence or RESTRAINT TO COMPEL or INFLUENCE a Vote or Refraining a Vote
- \* Has official Ballot outside of Voting Room unless AUTHORIZED
- \* COUNTERFEIT Ballots

## STATE VOTING LAWS = CRIMINAL OFFENSES

1. BUYING VOTES
2. SELLING VOTES
3. ALTERING OR CHANGING VOTE ON ELECTION DAY
4. PROVIDING FALSE INFO TO REGISTER OR VOTE
5. COUNTERFEITING OR DISTRIBUTING UNLAWFUL BALLOTS
6. FALSE ENDORSEMENT, DISTRIBUTION OR DELAY IN DELIVERY OF BALLOT
7. INTERFERENCE W/ OR CORRUPTION OF ELECTION OFFICER
8. COERCION OR INTIMIDATION OF ELECTOR
9. TAMPERING W/ POLITICAL SIGNS
10. WILLFUL REGISTRATION OF FICTITIOUS PERSON
11. DEPUTY REGISTRARS, FAILURE TO RETURN AFFIDAVITS OF REG.

- TRYING TO GET A COMMON LIST OF VOTE CRIMES THROUGHOUT THE STATES.  
\*GET COMMON LIST - USE COMMON TERMS

030866

## ALABAMA

Miscellaneous Offences include:

1. Illegal voting or attempting to vote
  2. Illegal voting at municipal elections
  3. Bribing or attempting to influence voter
  - ✓4. Buying votes
  - ✓5. Selling votes
  6. Candidate barred by bribery
  - ✓7. Altering or changing vote of elector
  8. Disturbing elector on election day
  9. Employer intimidating employee
  10. Coercion of employees of corporations
  - ✓11. Providing false information to register or vote
- (Ala.Code 1975 § 17-23)

## ALASKA

Election Offenses, Corrupt Practices, and Penalties include:

1. Election official misconduct in the first degree
2. Election official misconduct in the second degree
3. Improper subscription to petition
4. Campaign misconduct in the first degree
5. Campaign misconduct in the second degree
6. Campaign misconduct in the third degree
7. Applicability of campaign misconduct provisions
8. Telephone campaign misconduct
9. Unlawful interference with voting in the first degree
10. Unlawful interference with voting in the second degree
11. Voter misconduct in the first degree
12. Voter misconduct in the second degree
13. Unlawful interference with an election
14. Refusal to allow employees time off
15. Effect of certain convictions
16. Disposition of cases involving corrupt practice
17. Time limitations
18. Definitions

(AD ST § 15.56)

## ARIZONA

Penal Provisions, General Provisions

1. Applicability of penal provisions
- ✓2. Counterfeiting or distributing unlawful ballots; classification
- ✓3. False endorsement, knowing destruction or delay in delivery of ballot; classifications (*diff name*)
- ✓4. Interference with or corruption of election officer; interference with voting equipment; classification
5. Early ballot abuse; classification

030867

6. Changing vote of elector by corrupt means or inducement; classification
  7. Election officer ascertaining or disclosing elector's vote; classification
  8. Election officer changing vote of elector by menace or reward; classification
  9. Failure or refusal to perform duty by election officer; classification
  10. Refusal by election officer to perform duty; violation of election law; classification
  11. Counterfeiting election returns; classification
  12. Intimidation of elector by employer; classification
  - ✓ 13. Coercion or intimidation of elector; classification
  14. Corruption of electors; classification
  15. Election wagers; classification
  16. Illegal voting; pollution of ballot box; removal or destruction of ballot box, poll lists or ballots; classification
  - ? 17. Unlawful acts by voters with respect to voting; classification
  18. Additional unlawful acts by persons with respect to voting; classification
  - ✓ 19. Political signs; tampering; classification
  20. Signing of petitions; violation; classification
- (A.R.S. T. 16, Ch. 7)

## ARKANSAS

### General Provisions

1. Misdemeanors
2. Felonies

(A.C.A. § 7-1-103, 104)

## CALIFORNIA

### Penal Provisions

#### A. General Provisions

1. Scope of division
2. General fine
3. Failure to perform or violation of duty; general penalty

#### B. Voter Registration

1. Violations; imprisonment
- ✓ 2. Willful registration of fictitious person or person not requesting registration; violations; imprisonment
- ? 3. Deputy or registration elections official; violations; imprisonment
4. Interference with transfer of completed affidavits of registration; unauthorized retention or denial of right to return registration cards; misdemeanor
- ✓ 5. Deputy registrars; failure to return affidavits of registration; misdemeanor; report; civil or criminal action
6. Affidavit of registration or voter registration card; statement in support or opposition of candidates by other than registrant; misdemeanor
7. Tampering with party affiliation declaration
- ? 8. Voter registration cards; distribution; violations; infraction

- ✓9. Electronic submission of absentee ballot application for another registered voter; violation; offense; penalty
  - ✓10. Registration assistance for consideration; failure to comply with statutory requirements; misdemeanor; penalties; exemptions
  - 11. Affidavit records; notice of non-complying affidavits; failure to comply with statutory requirements; offense; penalties; exemptions
  - ✓12. Misuse of voter registration information; violation
  - ✓13. Disclosure of home address or telephone number on voter registration card; violations
- C. Nomination of Candidates
- ✓1. Subscription of false names to petitions; felony; imprisonment
  - ✓2. Nomination papers; false making, defacement or destruction; penalty
  - 3. Failure to properly file nomination papers or declaration of candidacy; misdemeanor
  - 4. False nomination papers or declaration of candidacy; filing or submission; penalty
  - 5. Suppression of nomination papers or declarations of candidacy; penalty
  - ✓6. Payment of consideration to induce a person not to become or to withdraw as a candidate; imprisonment
- D. Election Campaigns
- 1. Campaign literature
    - ✓a. Simulated ballot or sample ballot; printing or duplication; statement, official seal or insignia violations; misdemeanor
    - ✓b. False precinct information
    - c. Mass mailing; penal provisions
    - d. Reproduction or facsimile of seal of county or seal of local government agency in campaign literature or mass mailing with intent to deceive voters; offense
  - 2. Political Party Caucuses
    - a. Consideration for voting or agreeing to vote for or against nominees or candidates; penalty
    - ✓b. Bribes; giving or receiving; penalty
  - 3. Deceptive Online Activities
    - ✓a. Short title; political cyberfraud; definitions
    - b. Application to domain name registrar, registry, or registration authority
    - c. Transfer of domain name as remedy
    - d. Jurisdiction
  - 4. Political Meetings
    - a. Prevention of electors from assembling; misdemeanor
  - 5. Misrepresentation by Candidates
    - a. Implication that candidate is incumbent or acting in capacity of public officer; misdemeanor; injunction
    - b. Candidates' statements; false statement of material fact with intent to mislead; punishment

- 6. Solicitation of Funds
  - a. Solicitation without required consent; violations; misdemeanor
  - b. Solicitation not authorized by candidate or committee; use of name; notice; misdemeanor
- 7. Electioneering
  - ✓ a. Electioneering where voters may be casting votes; misdemeanor
  - b. Absentee voters; solicitation in the residence on the immediate presence of absentee voter; misdemeanor
- 8. Vandalism at Polling Places
  - a. Violations; misdemeanor
- 9. Misuse of State Publications
  - a. State agencies and departments; misuse of publications
- E. Ballots
  - ✓ 1. Use or furnishing of imitation ballot paper or punchcards; penalties
  - ✓ 2. Printing or circulation of nonconforming ballots
  - ✓ 3. Knowing distribution of unauthorized application for absent voter's ballot
  - 4. Receipt or examination of, or solicitation of voter to show voted ballot; penalty
- F. Corruption of the Voting Process
  - 1. General Provisions
    - a. Fraud; casting of votes; felony; imprisonment
    - ✓ b. Public officials; aiding illegal casting of votes; fraud; disqualification from holding office in state; imprisonment
    - c. Interference with officers or voters; imprisonment
  - 2. Corruption of Voters
    - ✓ a. Offer or promise of office, place or employment; to induce other to vote or refrain from voting; penalties
    - ✓ b. Gift or other consideration to induce person to vote or refrain from voting; penalties
    - ✓ c. Payment or offer to pay, lend or contribute to induce person to vote or refrain from voting
    - ? d. Bribery; payment of consideration with intent to bribe; penalties
    - ✓ e. Boarding, lodging or maintaining persons with intent to secure vote or to induce voting
  - 3. Intimidation of Voters
    - ✓ a. Use of force, violence, tactic of coercion or intimidation; penalties
    - ? b. Prohibited activities in proximity of polling place relating to the intent of dissuading others from voting; penalties
    - ? c. Political material in pay envelopes
    - ✓ d. Challenging right to vote without probable cause; conspiracies; penalty

*give a thing of value*

- ✓ e. Persons in possession of a firearm or uniformed peace officers or security guards stationed near polling place without authorization; penalty; application
- f. Hiring or arranging for another in possession of firearm or uniformed peace officer or security guard to be stationed near polling place; penalty
- g. Elections official; immediate vicinity
- 4. Corruption of Voting
  - ✓ a. Fraudulent voting; crime
  - b. Procuring or advising vote of unqualified persons; aiding or abetting offenses
  - c. Rejected
  - d. Precinct board members; ballot violations; misdemeanor
  - e. Precinct board members; disclosure of vote without consent; misdemeanor
  - ✓ f. § 18564. Tampering with or damaging voting machines; interference with secrecy of voting; unauthorized making or possession of keys; willful substitution of forged source codes
    - g. Civil action for offenses
    - h. Aiding and abetting offenses; penalty
    - i. Forging or counterfeiting election returns
    - j. Altering returns
    - k. Offenses at the polls; penalties
    - l. Aiding or abetting offenses
    - m. Voting results; offenses; misdemeanor
  - ✓ n. Counting board members; failure to obey lawful orders
  - o. Counting board members; liabilities and penalties
  - p. Deceiving voter unable to read; causing voter to vote for different person than intended through fraud; felony
  - q. Refusal of person required to be sworn or to answer questions; misdemeanor
  - r. Unlawfully acting as election officers; acting in unauthorized capacity; felony
  - s. Absent voter ballot; willful interference with delivery, retention beyond time limits or denial of right to return completed ballot; misdemeanor
  - ✓ t. Willful interference or cause of interference with return to local elections official by person in charge of completed absent voter ballot
  - ✓ u. Absent voter ballot; fraudulent signature
- G. Initiative, Referendum, and Recall
  - 1. Improper Signature -- Gathering Tactics
    - a. Misrepresentation or false statement concerning petitions
    - b. Refusal to show text of measure or petition; misdemeanor



- c. Obscuring summary of initiative or referendum measure; misdemeanor
      - d. Payment for signatures; offense
    - 2. False of Ineligible Signatures on Petition
      - a. Solicitation of circulators to affix or permit false or forged signatures; penalty
      - b. Circulation with false, forged or fictitious names; penalties
      - c. Signing more than once or while disqualified; penalty
      - d. Fictitious names or signing name of another; penalty
      - e. Filing with false signatures; penalties
    - 3. Improper Payments to Prevent Petition Circulation and Filing
      - a. Soliciting or obtaining money or thing of value for inducing proponents to abandon petitions
      - b. Receipt by proponent of consideration for abandoning petitions; penalties
      - c. Buying of petitions from circulators; misdemeanor
    - 4. Threats and Theft to Prevent Petition Circulation and Filing
      - a. Threat to commit assault or battery or to damage property; misdemeanor
      - b. Taking petitions from circulators by force or stealth; misdemeanor
    - 5. Refusal of Circulators to Turn in Petitions
      - a. Failure to surrender petitions to proponents; penalties
    - 6. Misuse of Signatures on Petition
      - a. Use of signatures for other than qualification for ballot; misdemeanor
    - 7. False Affidavits Concerning Petitions
      - a. False affidavits; penalties
      - b. Public officers; false returns, certifications or affidavits
    - 8. Filing Petitions to Defeat an Initiative or Referendum
      - a. Misdemeanor
      - b. Void petitions; filing with intent to defeat expression of public will
    - 9. Misuse of Campaign Funds
      - a. Misappropriation; expenses within due and lawful execution of the trust; penalties
  - H. Obligations of Precinct Board
    - 1. Failure to fulfill duties; misdemeanor
- (Cal.Elec.Code § 18000)

**COLORADO**  
Election Offenses

A. General Provisions

- 1. District attorney or attorney general to prosecute
- 2. Sufficiency of complaint--judicial notice
- 3. Immunity of witness from prosecution

15. Disclosing or identifying vote
  16. Intimidation
  17. Electioneering--removing and return of ballot
  18. Liquor in or near polling place
  19. Destroying, removing, or delaying delivery of election records
  20. Penalty for destruction of supplies
  21. Release of information concerning count
  22. Employer's unlawful acts
  23. Unlawfully giving or promising money or employment
  24. Receipt of money or jobs
  25. Defacing or removing abstract of votes
  26. Penalty for neglect of duty--destruction of ballots--breaking seal
- G. Absentee Voting and Voting by New Residents
1. Mailing other materials with absentee voter's ballot
  2. Absentee voter applications and deliveries outside county clerk and recorder's office
  3. Offenses relating to absentee voting

(C.R.S.A. § 1-13)

## CONNECTICUT

### Prohibited Acts and Penalties

- A. Failure to warn election
- B. Delay in counting or declaring vote
- C. Tampering with machine by election official
- D. False return
- E. Improper printing of ballot label
- F. Official neglect or fraud
- G. Fraudulent registration
- H. False swearing before registrar, moderator, board or State Elections Enforcement Commission
- I. Absentee ballots
- J. False statement in absentee balloting. Class D felony
- K. Fraudulent voting
- L. Primary or enrollment violations
- M. Decision of election officials no bar to prosecution
- N. Circulation of misleading instructions
- O. Influencing elector to refrain from voting
- P. Acts prohibited in elections, primaries, referenda, caucuses and conventions.  
Penalties
- Q. Employers' threats
- R. Interference with electors in voting
- S. Tampering with voting machine
- T. Arrest of accused
- U. Misrepresentation of contents of a petition

(C.G.S.A § 9. Ch. 151)

4. Perjury
  5. False certificates by officers
  6. Forgery
  7. Violation of duty
  8. False statements relating to candidates or questions related to electors—penalties—definitions
  9. Wagers with electors
  10. Penalties for election offenses
  11. Offenses relating to mail ballots
  12. Interference with distribution of election material
  13. Failure to comply with requirements of secretary of state
- B. Qualification and Registration of Electors
1. Interfering with or impeding registration
  2. Unlawful qualification as taxpaying elector
  3. Procuring false registration
  4. Adding names after registration closed
  5. County clerk and recorder signing wrongful registration
  6. Signature on registration record is proof of oath
  7. Deputy county clerk and recorder--influencing party affiliation
  8. High school deputy registrar--influencing party affiliation
- C. Political Party Organization
1. Fraud at precinct caucus, assembly, or convention
  2. Fraudulent voting in precinct caucus, assembly, or convention
  3. Offenses at precinct caucus, assembly, or convention
- D. Access to Ballot by Candidate
1. Bribery of petition signers
  2. Tampering with nomination papers--nomination petitions
  3. Defacing of petitions other than nominating petitions
- E. Notice and Preparation for Elections
1. Tampering with notices or supplies
- F. Conduct of Elections
1. Interference with election official
  2. Interfering with watcher
  3. Tampering with registration book, registration list, or pollbook
  4. Unlawfully refusing ballot or permitting to vote
  5. Voting by persons not entitled to vote—penalty
  6. Personating elector
  7. Delivering and receiving ballots at polls
  8. Inducing defective ballot
  9. Tampering with voting equipment
  10. Elected official not to handle electronic or electromechanical voting equipment or devices
  11. Voting in wrong precinct
  12. Residence--false information—penalty
  13. Voting twice—penalty
  14. Interference with voter while voting

## **DELAWARE**

### **Penal and Enforcement Provisions**

- A. Neglect of duty; corrupt or fraudulent conduct; penalty
- B. Wrongful registration; assault; riot; breach of peace; penalty
- C. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; ...
- D. Alcoholic liquor in registration places; penalty
- E. Intimidation of registration officers; penalty
- F. Notice to Attorney General of violations of registration laws
- G. Unauthorized entering of registration area; interference with registration; penalty

(DE ST TI 15 Ch. 23)

### **Criminal Offences**

#### **A. General Provisions**

- 1. Jurisdiction of Court
- 2. Prosecution by Attorney General; duty to report violations
- 3. Irregularities or defects in election as a defense
- 4. Honest belief as a defense
- 5. Application to school elections

#### **B. Particular Offenses**

- 1. Neglect of duty by department member; corrupt or fraudulent conduct; penalty
- 2. Refusal of inspector or judge of election to serve; penalty
- 3. Refusal of clerk of election to qualify or serve; penalty
- 4. Improper conduct of printer of ballots and ballot envelopes; penalty
- 5. Improper use of ballot or envelope; penalty
- 6. Tampering with voting machines; penalties
- 7. Unauthorized entering of voting room; penalties
- 8. Interference with election; penalties
- 9. Feigning a physical disability to obtain assistance in voting; penalty
- 10. Secreting person in election room; penalty
- 11. Removal or destruction of election supplies or equipment or voting machines; penalty
- 12. Disclosures by election officers; penalty
- 13. Intimidation, persuasion or bribery by election officer; penalty
- 14. Inducing the making of distinguishing mark on ballot; penalty
- 15. Inducing election officers to violate election laws; penalty
- 16. Violations by officials; penalty
- 17. Bribery of person expecting to be election or registration officer; penalty
- 18. Fraudulent voting; penalty
- 19. False entries by clerk of election
- 20. Failure of election officer to perform duties
- 21. False count or certification by election officer
- 22. Fraudulent deposit or alteration of ballots or entering voting machine booth or casting vote; penalty

23. Willful neglect of duty by election officers
24. Stealing, destroying or secreting records; penalty
25. Perjury; subornation of perjury
26. Tampering with ballots or deceiving voters; penalty
27. Disobeying election officers; penalty
28. Breach of peace or violence on election day; penalty
29. Interference with election officer or challenger; penalty
30. Failure of inspector to preserve order
31. Stealing or destroying ballot box, ballot, poll list; penalty
32. Requiring unauthorized oath; penalty
33. Candidate for General Assembly not to make written pledge; penalty
34. Unauthorized release of absentee vote information; penalty

C. Offenses Carrying Civil Liability

1. Intimidation of election officers; penalty
2. Intimidation of electors; penalty
3. Liability of corporation or officers
4. Liability of stakeholder for paying election bet

(DE ST TI 15 Ch. 51)

**DISTRICT OF COLUMBIA**

Regulation of Elections

- A. Interference with registration and voting
- B. Corrupt election practices
- C. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted

(DC ST § 1-1001.12, 1001.14-15)

**FLORIDA**

Violations; Penalties

- A. False swearing; submission of false voter registration information
- B. Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application
- C. Unauthorized use, possession, or destruction of voter information card
- D. False declaration to secure assistance in preparing ballot
- E. Fraud in connection with casting vote
- F. Vote selling
- G. Absentee ballots and voting; violations
- H. Violations; neglect of duty; corrupt practices
- I. Voting rights; deprivation of, or interference with, prohibited; penalty
- J. Corruptly influencing voting
- K. Voter intimidation or suppression prohibited; criminal penalties
- L. Absentee ballots and voting; violations
- M. Remuneration by candidate for services, support, etc.; penalty
- N. Threats of employers to control votes of employees
- O. Aiding, abetting, advising, or conspiring in violation of the code
- P. Failure to assist officers at polls
- Q. Neglect of duty by sheriff or other officer

- R. Intermingling ballots
  - S. Unqualified electors willfully voting
  - T. Voting fraudulent ballot
  - U. Voting in person after casting absentee ballot
  - V. Casting more than one ballot at any election
  - W. Petitions; knowingly signing more than once; signing another person's name or a fictitious name
  - X. Using stickers or rubber stamps or carrying certain items in voting booth; penalty
  - Y. Ballot not to be seen, and other offenses
  - Z. Changing electors' ballots
  - AA. Stealing and destroying records, etc., of election
  - BB. Disclosing how elector votes
  - CC. Penalty for assuming name
  - DD. Penalty for destroying ballot or booth, etc.
  - EE. False or malicious charges against, or false statements about, opposing candidates; penalty
  - FF. Inspectors refusing to allow watchers while ballots are counted
  - GG. Voting system; unlawful possession; tampering
  - HH. Political activities of state, county, and municipal officers and employees
  - II. Supervisor of elections; delivery of books to successor
  - JJ. Witnesses as to violations
  - KK. Violations not otherwise provided for
  - LL. Fraudulent registration and illegal voting; investigation
  - MM. Grand juries; special investigation
- (F.S.A. § 104)

## **GEORGIA**

### **Miscellaneous Offenses**

- A. False statements
- B. False registration
- C. Insertion and alteration of entries in documents; removal; refusal to deliver
- D. False signatures and statements in nomination petitions
- E. Nomination petitions; certificates and papers; destruction; fraudulent filing; suppression
- F. False statement in connection with notices of candidacy and qualifying for party nomination
- G. Interference with primaries and elections
- H. Intimidation of electors
- I. Giving unlawful assistance in voting
- J. Interfering with poll officers
- K. Giving or receiving money or gifts for purpose of registering as voter, voting, or voting for particular candidate
- L. Unlawful voting
- M. Repeat voting at primaries and elections
- N. Unlawful absentee voting

- O. Unlawful possession of ballots
  - P. Counterfeit and facsimile ballots, ballot cards or ballot labels
  - Q. Destroying or delaying delivery of ballots
  - R. Removing ballots
  - S. Prying into ballots and ballot cards
  - T. Receiving unlawful assistance in voting
  - U. Tampering with voting machines
  - V. Unauthorized possession of voting machine key
  - W. Tampering with vote recorders or tabulating machines
  - X. Altering, modifying, or changing voting equipment
  - Y. Destroying, defacing or removing notices, et cetera
  - Z. Refusal to administer oath; acting without being sworn
  - AA. Refusal to permit inspection of papers; destruction or removal; superintendents
  - BB. Refusal to permit inspection of papers; destruction or removal; Secretary of State
  - CC. Frauds by poll officers
  - DD. Count and return of votes
  - EE. Omissions by poll officers
  - FF. Poll officers permitting unregistered persons to vote; refusing to permit qualified electors to vote; permitting unauthorized assistance of elector
  - GG. Poll officers permitting unlawful assistance
  - HH. Failure to keep and return record of assisted voters
  - II. Law enforcement officer; failure to quell disturbances at polls; hindering or delaying poll officers and others
  - JJ. Offenses by printers of ballots
  - KK. Failure to perform duty
  - LL. Hindering or delaying performance of duty
  - MM. Punishment for misdemeanors
  - NN. Punishment for felonies
  - OO. Use of list of electors for commercial purposes
  - PP. Soliciting persons to register to vote
  - QQ. Compensation for soliciting persons to register to vote based upon number of persons registered
  - RR. Conspiracy to commit election fraud; violations
- (Ga. Code Ann., § 21 Ch. 2 Art.15)

## **HAWAII**

### **Election Offenses**

- A. Classes of offenses
  - B. Election frauds
  - C. Voter fraud
  - D. Penalties; disqualification for, removal from office; reports of conviction to chief election officer
  - E. Misdemeanors
- (HI ST § 19)

## **IDAHO**

## **ILLINOIS**

### **Offenses**

#### **A. Campaign Violations**

1. Defacing, falsifying, or destroying declarations, requests, petitions, or certificates
2. Printing, publishing or distribution of slate during primary campaign without authority
3. Circulation or publication of anonymous campaign material
4. Solicitation, challenge, or performance of election function by state police department civilian employee, police officer or firefighter
5. Collection, receipt or disbursement of money or property by committee without appointment of treasurer
6. Excess contributions by corporation or labor organization
7. Acceptance of contributions in excess of permitted amounts by certain judges
8. Contributions in the name of another person
9. Filing fraudulent reports
10. Failure to file required report
11. Commingling committee funds with personal funds
12. Personal use of committee funds

#### **B. Vote Fraud**

1. Conspiracy to submit false application for registration or to vote illegally; paying individual to vote
2. Fraudulent application for registration or procurement of registration
3. Absentee ballot fraud
4. Fraudulent subscription of another person's name to affidavit of registration or absentee ballot
5. Registering to vote more than once
6. Destruction or failure to file or deliver absentee ballot application or registration affidavit or form after execution
7. Unauthorized release or removal of registration materials from circuit court office
8. Withholding information or furnishing false information to poll taker; return of false names or names of deceased persons
9. Return of ineligible person, fictitious or deceased's names by poll taker
10. Unregistered or unauthorized voting
11. Voting by ineligible persons
12. Voting in other precincts
13. Voting or applying to vote in false name and own name
14. Hiring or soliciting person to vote in precinct where person is not voter
15. Precinct officer or public official allowing ineligible voters or unauthorized procedure
16. Unauthorized delivery of ballots



17. Ballots; fraudulent application, showing, examination, receipt, delivery, possession, or completion or signing
  18. Marking ballot to indicate to another person how voter has voted
  19. Disclosure of vote
  20. Forgery of official ballot endorsement; printing or circulating imitation ballot
  21. Deceptive registration of vote
  22. Fraudulent inducement to vote other than as intended
  23. False representation of ballot to non-English speaking voter
  24. Opening, destruction or unauthorized delivery of ballots by custodian of ballots
  25. Removal or destruction of ballots; false entries in poll book; false tallying
  26. Marking or defacing ballots by precinct election board member or authorized election personnel
  27. Tampering with ballot container or contents
  28. Causing vote to be incorrectly taken down; false statement, certificate, or return
  29. Fraudulent alteration of election return; intentional destruction of poll book or tally; fraudulent alteration of vote as returned
  30. Inspecting voting system without authorization
  31. Voting at multiple town conventions
- C. Interference with Free and Equal Elections
1. False, fictitious, or fraudulent registration applications or ballots
  2. Failure to cast or return ballot in authorized manner
  3. Interference with watcher's duties
  4. Obstruction of, interference with, or injury of election officer or voter
  5. Tampering with voting system
  6. Allowing inaccurately adjusted voting system to be used
  7. Removal, change, or mutilation of voting system for purpose of deceiving voter
  8. Damaging, disarranging, or tampering with voting system
  9. Failure to receive vote of legal voter
  10. Removal, defacing or destruction of supplies, instruction cards from voting booth; removal or destruction of voting booth
  11. Tampering with marking device, ballot or record or equipment; interference with operation or secrecy of voting
  12. Leaving poll with ballot or ballot marking device
  13. Removal of ballot or marking device from polls; possession outside polls
  14. Printers; unauthorized printing or delivery of ballots
  15. Unauthorized entries at polls
  16. Electioneering
  17. Inducement of votes by board member or precinct election officer prohibited
  18. Actions to unlawfully influence voter or candidate

19. Inducing votes by gift or offer to compensate
  20. Acceptance or solicitation of compensation to induce or procure votes
  21. False or fraudulent absentee ballot applications or voter registration applications
  22. Influencing political opinions or actions of employees in the workplace
  23. Voter intimidation
  24. Poll list maintenance violations
  25. Poll list use violations
- D. Procedural Violations by Election Officers
1. Unlawfully serving as precinct election board member
  2. Inspectors; negligent or knowing failure to appear at election board's office
  3. Omission in performance of required duties
  4. Voter registration information violations
  5. Allowing observance of voter preparing ballot
  6. Deposit of ballots not initialed or ballots externally defaced
  7. Disclosure of how voter voted or information regarding appearance of ballot voted
  8. Opening or marking ballot or ascertaining how voter voted
  9. Disclosure of votes or electioneering
  10. Provision of information concerning absentee vote count before closing of polls
- E. Enforcement Provisions
1. Affidavit against illegal voter
  2. Affidavits; packaging, sealing, endorsing and delivery to grand jury; inquiry by grand jury
  3. Duty to report violations to prosecuting attorney and violator; presentation to grand jury
  4. Prosecution of violators
  5. Indictment or information; allegations
  6. Criminal prosecutions; self-incrimination defense not available to witness
  7. Informants; immunity
  8. Employment of persons convicted of vote fraud; reemployment; injunctions and civil penalties
- F. Election Profiteering
1. Grant of request for voter information to be used in prohibited manner; violations
  2. Use of voter registration information for solicitation; infraction; misdemeanor

(IN ST 3-14)

## **IOWA**

### **Election Misconduct**

- A. Title and purpose--election officials defined

- B. Election misconduct in the first degree
- C. Election misconduct in the second degree
- D. Election misconduct in the third degree
- E. Election misconduct in the fourth degree
- F. Technical infractions—notice

(I.C.A. § 39A)

## **KANSAS**

### **Election Crimes**

- A. Corrupt political advertising; penalty
- B. Definitions
- C. Election bribery
- D. Bribery to induce signing of nomination papers
- E. Election perjury
- F. Election forgery
- G. Disorderly election conduct.
- H. Possessing false or forged election supplies
- I. Intimidation of voters
- J. Voting without being qualified
- K. Bribery of an election official
- L. Bribe acceptance by an election official
- M. Misconduct of an election officer
- N. Election fraud by an election officer
- O. Election suppression
- P. Voter registration suppression
- Q. Unauthorized voting disclosure
- R. Election tampering
- S. False impersonation as party officer
- T. Voting machine fraud
- U. Printing and circulating imitation ballots
- V. Marking ballots to identify
- W. Destruction of election supplies
- X. Destruction of election papers
- Y. Electioneering
- Z. False impersonation of a voter
- AA. Forfeiture of office or employment upon conviction

(K.S.A. § 25-24)

## **KENTUCKY**

### **Election Offenses and Prosecutions**

- A. Definitions
- B. Clerk making or permitting wrongful registration, or failing or refusing to deliver copies of registration records
- C. Wrongful registration
- D. Alteration, suppression, mutilation, or destruction of registration record; making or using false or fraudulent record

- E. Interfering with registration
- F. Alteration, mutilation, or suppression of nomination papers
- G. Forgery of nomination papers
- H. Clerk's failure to place candidate's name on ballot
- I. Printer's violation of duty in printing ballots
- J. Removal or destruction of election supplies or booths
- K. Unauthorized possession of key to voting machine; tampering with, injuring, or destroying ballot labels or voting machines
- L. Sheriff's failure to hold election or perform other election duties
- M. Election officer's refusal to admit challenger
- N. Preventing voter from casting ballot; interfering with election
- O. False personation of a voter; nonresident or unqualified person voting
- P. Receipt of illegal vote or rejection of legal vote by election officer
- Q. Disobeying election officer's command
- R. Removing or tampering with ballots
- S. Making or receiving expenditures for vote, for withholding of vote, or for signing a petition to have public question on ballot; definition of "expenditure"; procedures for paying for transportation of voters; applicability of KRS 502.020
- T. Prohibition against paying compensation based upon number or characteristics of voters registered
- U. Providing another with intoxicants on election day
- V. Denial of rights of inspectors by county board of elections
- W. Alteration, suppression, or destruction of stub book, return, or certificate of election
- X. Violation of law or failure to perform duty by member of board of elections
- Y. Intimidation of election officer or board of elections
- Z. Violation of duties for which no other penalty provided
- AA. Advising or assisting violation of election laws
- BB. Prohibitions against holding elective office
- CC. Irregularity or defect in conduct of election no defense
- DD. Applicability of penalties for regular elections to primaries and to elections for United States Senator
- EE. Report by election officers of violations; arrest of offenders
- FF. Report to grand jury on election officials inexcusably absent; subject to prosecution
- GG. Grand jury may compel testimony as to violation of election laws
- HH. Refusal to produce evidence of corrupt practices when summoned by grand jury a Class A misdemeanor
- II. Evidence required to support conviction for violation of election laws
- JJ. Witness not exempted from giving incriminating testimony; immunity except from perjury charge
- KK. Limitation of prosecutions

(KRS § 119)

**LOUISIANA**

## **MAINE**

## **SOUTH DAKOTA**

## **TENNESSEE**

### **Prohibited Practices Generally**

1. Nominating meetings and elections; interference
2. Violation of title
3. Interference with person's duties or rights
4. Misrepresentations
5. Perjury
6. Violations; procurement or inducement
7. Improper registration of voting
8. Improper possession of electronic supplies
9. False entries on election documents
10. Unlawful assistance of voter
11. Interference with marked ballots
12. Display of campaign materials within posted boundaries
13. Campaign communications; identification of sponsor
14. Candidate making exchange for support
15. Demanding candidates support in exchange for support
16. Exchanges with candidates; penalties
17. Candidate's exchanges; permissible expenditures
18. Bribery; election officials
19. Bribery; voters
20. Bribery; acceptance by voter
21. Bribery; penalty
22. Betting; on election
23. Betting; candidate betting with a voter
24. Betting; to procure challenge or to prevent voting
25. Corporate funds; campaign contributions
26. Directing employees on voting
27. Threatening employees
28. Grand jury witness; immunity
29. Defenses; irregularities
30. Expenditures permitted
31. Corporations; penalties
32. Fines; school fund
33. False campaign literature
34. Suffrage for persons convicted of infamous crimes
35. Advertising material; public utility property

### **Offense by Public Officers**

1. Interference with election or nomination
2. Soliciting contributions from recipients of government benefits
3. Promises of government benefits

4. Deprivation of government benefits
  5. State-owned property used for political purposes
  6. Political activities interfering with state business
- (Const. Art 2. §19-01)

## **TEXAS**

Nothing in statutes regarding election crimes.

## **UTAH**

### **Offenses Involving Election Administration**

1. Willful neglect of duty or corrupt conduct
  2. Destroying or concealing ballots
  3. Neglect or refusal to deliver ballots or returns
  4. Officer or watcher revealing vote
  5. Damage, alteration or theft of election equipment
- (U.C.A. §20A-400.5)

## **VERMONT**

### **Offenses Against the Purity of Elections**

1. Presiding officer receiving illegal vote
  2. Counting and turning ballot boxes before proper time
  3. Nonperformance of duty by public officer
  4. Casting more than one ballot
  5. Voting in one or more place
  6. Voter omitted from list; voting in another town
  7. Perjury before board
  8. Producing change in list wrongfully
  9. False answer as to right to vote
  10. Unqualified person voting
  11. Fraudulent voting
  12. Aiding unqualified voter to vote
  13. Undue influence
  14. Using intoxicating liquor to influence voters
  15. Destroying lists; hindering voting
  16. Offenses applying to primary elections
  17. Destroying certificates of nomination
- (VT ST T. 35 § 1931)

## **VIRGINIA**

### **Election Offenses and Penalties**

1. Bribery, intimidation of election officers
2. Willful neglect or corrupt conduct
3. Interference with registration
4. Destruction of, or failure to mail or deliver voter registration application
5. Unlawful disclosure or use of social security number
6. Campaigning at registration locations

7. Illegal voting and registrations
  8. Bribery, intimidation of person receiving ballot
  9. Advice or assistance in ballot casting
  10. Soliciting or accepting bribe to influence or procure vote
  11. Selling, giving away or counterfeiting ballots
  12. Stealing or tampering with ballot containers
  13. Unauthorized duplication or possession of voting equipment key or electronic activation device.
  14. Ballot not to be carried away
  15. Offenses as to absent voters
  16. False statements and penalties
  17. Immunity of witnesses
  18. Complaints and allegations of election law offenses
- (VA ST T. 24-1000 to 1019)

## **WASHINGTON**

### **Crimes and Penalties**

1. Voting, registration irregularities
2. Violations by officers
3. Penalty
4. Political advertising, removing or defacing
5. Tampering with registration form, absentee or provisional ballots
6. Registration officials' violations
7. Disenfranchisement discrimination
8. Voter violations
9. Unqualified registration
10. Misuse, alteration of registration data base

### **Petitions and Signatures**

11. Violations by officers
12. Violations—corrupt practices
13. Violations by signers
14. Petitions—improperly signing
15. Duplication of names
16. Paid petition solicitors

(Ch. 29A.84.0101-84.740)

## **WEST VIRGINIA**

### **Offenses and Penalties**

1. Unlawful printing, possession or delivery of ballots
2. False swearing
3. Commissioner's failure to procure or return supplies
4. Destruction or removal of election supplies
5. Unauthorized presence in election room; three hundred foot limit
6. Wrongful refusal or allowance of votes; malicious or frivolous challenges
7. Distinguishing marks on ballots
8. Other unlawful acts at polling places

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9. Disorder at polls; failure to assist in preventing disorder
10. Failure to make returns
11. Improper influence and bribery by candidates
12. Buying or selling vote unlawful
13. Unlawful acts by corporations
14. Receiving or soliciting bribes by voters
15. Illegal voting; deceiving voters
16. Unlawful voting in primary elections
17. Violations concerning absent voters' ballots
18. Obstructing employees' freedom to vote
19. Wagering or betting on elections
20. Punishment where penalty not described or where failure to perform duty not specifically made an offense

(WV ST Ch. 3, Art 9)

### **WISCONSIN**

Prohibited election practices include:

1. Campaigning restrictions
2. Posting and distributing of election-related material
3. Communication of political messages
4. False representation affecting elections
5. Election restrictions on employers
6. Denial of government benefits
7. Election threats
8. Election bribery
9. Election fraud

(W.S.A. 12)

### **WYOMING**

Felony offenses include:

1. Registration offenses
2. Unlawful opening of a ballot box
3. Unlawful opening of a voting machine
4. Unlawful possession of a key
5. False voting
6. Falsifying election documents
7. False swearing
8. Offering a bribe
9. Accepting a bribe
10. Intimidation

(Laws 1973, ch. 251, § 1; W.S. 1957, § 22.1-406.)

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

**Via Facsimile Transmission ONLY**  
**202-293-2672**

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

030888




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**FACSIMILE TRANSMITTAL SHEET**

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**FROM: RALPH G. NEAS  
PRESIDENT, PEOPLE FOR THE AMERICAN WAY FOUNDATION**

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**DATE: 10/18/06**

**TOTAL NO. OF PAGES INCLUDING COVER: 3**

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**RE: REPORT COMMISSIONED BY THE EAC ON VOTER FRAUD**

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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

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**NOTES/COMMENTS:**

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Cc: USPS Mail

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2000 M STREET, NW ♦ SUITE 400 ♦ WASHINGTON, DC 20036  
TELEPHONE 202-467-4999 ♦ FAX 202-293-2672 ♦ EMAIL pfaw@pfaw.org

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October 18, 2006

Chairman Paul DeGregorio  
Commissioner Donetta L. Davidson  
Commissioner Gracia M. Hillman  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
Fax: (202) 566-3127

Dear Commissioners,

On October 11<sup>th</sup>, *USA Today* published an article describing the report commissioned by the EAC on voter fraud. We write today to urge the EAC to release this report.

As a 25 year old civil rights and civil liberties organization, People For the American Way Foundation (PFAWF) and our sister organization, People For the American Way (PFAW) have long been dedicated to ensuring the integrity of our elections. In particular in the years since the 2000 election, PFAWF and other principle partners such as the NAACP and the Lawyers' Committee for Civil Rights Under Law, have carried out a program called Election Protection to ensure that all eligible voters are able to vote and have that vote counted as cast.

We know that voter fraud and intimidation occur- we've seen the long lines, the erroneous purges, the misleading flyers and phone calls. And yet there seems to be little attention to these matters on the state and federal level.

Instead, a disproportionate amount of time and energy are spent on measures that purport to curb voter fraud by requiring voters to produce proof of citizenship and identity to vote. In actuality, these measures do little to secure the elections and much to disenfranchise otherwise eligible voters. Indeed we are weeks away from an election where thousands of eligible voters may be disenfranchised by overly restrictive voter identification laws. That presents a real threat to the integrity of our elections and the health of our democracy.

The report that the EAC commissioned from voting experts would make a vitally important contribution to the national discourse on the reality of voter fraud. In light of the numerous claims regarding the prevalence of voter fraud, this report provides a much

needed analysis about the state of our electoral process. While media reports indicate that this tax-payer funded report is final, even if there are outstanding concerns within the EAC, we implore you to move forward with releasing the report as is, and to hold a public hearing to address any potential issues. Again, the importance of the information in this report is paramount and the public deserves such full disclosure. The report should be released immediately so that those who are concerned about ensuring the integrity of elections can benefit from its findings.

Sincerely,



Ralph G. Neas

President, People For the American Way Foundation

Cc: Senate Majority Leader Bill Frist  
Senate Minority Leader Harry Reid  
Senator Trent Lott, Chair, Senate Rules and Administration  
Senator Chris Dodd, Ranking Member, Senate Rules and Administration  
House Majority Leader John Boehner  
House Minority Leader Nancy Pelosi  
Representative Vernon Ehlers, Chair, House Administration  
Representative Juanita Millender-McDonald, Ranking Member, House Administration

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UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

WWW.USCCR.GOV

MICHAEL YAKI  
COMMISSIONER

October 17, 2006

The Honorable Gerald Reynolds  
Chair, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, N.W.  
Washington, DC 20425

RE: Elections Assistance Commission Report

VIA ELECTRONIC MAIL

Dear Mr. Chairman

I am writing to urge you and my fellow Commissioners to exercise our Congressionally-authorized subpoena power to compel the production of the report on voting fraud that the United States Election Assistance Commission ("EAC") refuses to release. It was clearly evident during our briefing last week on Voter Fraud and Intimidation that the results of the EAC report could have a significant impact on the quality and quantitative analysis of any briefing report that might be issued by the Commission.

According to an article in the October 11<sup>th</sup> edition of USA Today, "the bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address." Indeed, "there is widespread but not unanimous agreement that there is little polling-place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, non-citizen voting and felon voters" according to the article. Further, the USA Today article states that the report, "prepared by Tova Wang, an elections expert at the Century Foundation think tank, and Job Serebrov, an Arkansas attorney, says most fraud occurs in the absentee ballot process, such as through coercion or forgery."

Just based on this news article, the report has information clearly germane to our briefing and subsequent analysis of the testimony provided. I believe that in carrying out our Congressional mandate, the need to have access to and analyze the Election Assistance Commission report is a necessary prerequisite to an unbiased and informed report on Voter Fraud.

It is my understanding that the Chair has the authority under law to sign a subpoena on his own accord or, alternatively to seek a vote of the Commission to issue said subpoena. I believe the subpoena would be very short and direct: the production of the suppressed report.



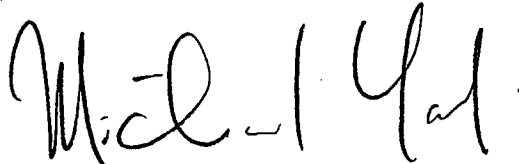
Page 2

Letter from Commissioner Yaki to Chair Reynolds

I respectfully request that the Chair immediately issue a subpoena or, in the alternative, conduct an immediate notational vote on the matter of issuing a subpoena to compel production of the report.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Michael Yaki". The signature is written in a cursive, flowing style.

MICHAEL YAKI

Commissioner

United States Commission on Civil Rights



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

**Via Facsimile Transmission ONLY**  
**202-293-2672**

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

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## VOTING FRAUD-VOTER INTIMIDATION WORKING GROUP MEETING

Thursday, May 18, 2006

1:00 PM - 5:30 PM

U.S. Election Assistance Commission  
1225 New York Avenue, N.W., 11<sup>th</sup> Floor  
Washington, D.C. 20005

### AGENDA

- |                   |  |
|-------------------|--|
| 1:00 PM - 1:30 PM | Introduction   |
|                   | EAC Authority<br>Overview and Purpose of Current Project<br>Purpose and Members of the Working Group<br>Related EAC Research |
| 1:30 PM - 2:00 PM | Review of Preliminary Research   |
|                   | Literature & Reports<br>Interviews<br>News Articles<br>Court Cases   |
| 2:00 PM - 3:15 PM | Definition & Findings from Current Project Research  |
| 3:15 PM - 3:30 PM | Break  |
| 3:30 PM - 5:00 PM | Ideas for Future EAC Activities  |
|                   | Recommended Research Methodologies<br>Consultant Recommendations<br>Working Group Ideas                                      |
| 5:00 PM - 5:30 PM | EAC Next Steps   |

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## Voting Fraud-Voter Intimidation Working Group

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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## **Defining Election Fraud**

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc);
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;

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- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.



## **Existing Literature Reviewed**

### **Reports**

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote, General Accounting Office

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Securing the Vote: An Analysis of Election Fraud, Lori Minnite

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

**Books**

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Fooled Again, Mark Crispin Miller

**Legal**

*Indiana Democratic Party vs. Rokita*

*Common Cause of Georgia vs. Billup*

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)

## Interviews

### Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate -- including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one’s definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment
- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving

election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines



**List of Experts Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Records, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

## **Nexis Articles Analysis**

Note: The search terms used were ones agreed upon by both Job Serebrov and Tova Wang and are available upon request. A more systematic, numerical analysis of the data contained in the Nexis charts is currently being undertaken. What follows is an overview.

Recommendation: In phase 2, consultants should conduct a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **Overview of the Articles**

### *Absentee Ballots*

According to press reports, absentee ballots are abused in a variety of ways:

1. Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
2. Workers for groups and individuals have attempted to vote absentee in the names of the deceased
3. Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### *Voter Registration Fraud*

According to press reports, the following types of allegations of voter registration fraud are most common:

1. Registering in the name of dead people
2. Fake names and other information on voter registration forms
3. Illegitimate addresses used on voter registration forms
4. Voters being tricked into registering for a particular party under false pretenses

5. Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

*Voter Intimidation and Suppression*

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio and Pennsylvania.

*"Dead Voters and Multiple Voting"*

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations

turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### *Vote Buying*

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### *Deceptive Practices*

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction

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of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

*Non-citizen Voting*

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

*Felon Voting*

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has the large number of ineligible felons that remained on the voting list.

*Election Official Fraud*

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

**Rough Summary of Department of Justice, Public Integrity Section Activities,  
October 2002-January 2006\***

Prosecutions and Convictions-- Individuals

Noncitizen voting: 20  
Vote buying: 49  
Double voting: 12  
Registration fraud: 13  
Civil Rights: 4  
Voter Intimidation: 2  
Unclear: 1

Open Investigations (note: a few cases overlap with prosecutions and convictions)

Noncitizen voting: 3  
Vote buying: 25  
Double voting: 15  
Registration fraud: 29  
Absentee ballot fraud: 9  
Official: 8  
Ineligibles: 4  
Deceptive Practices: 1  
Civil Rights: 14  
Intimidation: 6  
Other: 2

Cases and Investigations Closed for Lack of Evidence

Civil Rights: 8  
Official: 12  
Registration Fraud: 12  
Absentee Ballot Fraud: 14  
Ineligible Voting: 3  
Intimidation: 8  
Double Voting: 5  
Ballot Box Stuffing: 1  
Vote Buying: 14  
Ballot/machine tampering: 2  
Other: 8  
Unclear: 3

\*Based upon information available as of January 2006

## Case Summaries

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

*Job Serebrov*

*May 2006*



**Determining a Methodology for Measuring Voter Fraud and Intimidation:  
Recommendations of Political Scientists**

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- 1) In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- 2) Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)
  - Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- 3) Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- 4) The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- 5) One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- 6) Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places
  - Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are

more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately

7) Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted

would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- 8) Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches— investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina’s displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who “voted” in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast

absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

May 12, 2006

**MEMORANDUM**

**TO:** EAC Commissioners

**FROM:** Peggy Sims, Election Research Specialist *PS*

**SUBJECT:** Voting Fraud-Voter Intimidation Working Group Meeting

The first meeting of the Voting Fraud-Voter Intimidation Working Group will take place from 1:00 PM to 5:30 PM on Thursday, May 18th, 2006 at the offices of the U.S. Election Assistance Commission (EAC), 1225 New York Avenue, NW, 11<sup>th</sup> Floor, Washington, DC.

As you know, Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority. Consequently, in September 2005, EAC contracted with two consultants (Job Serebrov and Tova Wang) to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;

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- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

For your information, the folder accompanying this letter includes a number of items related to our consultants' preliminary research and the upcoming meeting:

- a meeting agenda;
- a list of Working Group members;
- a draft definition of election fraud;
- a list of reports and literature reviewed;
- a summary of interviews conducted and a list of experts interviewed;
- a list of experts interviewed;
- an analysis of news articles researched through Nexis;
- a summary of Department of Justice, Public Integrity Section cases, October 2002-January 2006;
- an analysis of case law review;
- a summary of research methodology recommendations from political scientists and experts in the field; and
- a CD with summaries of individual reports and literature reviewed, summaries of individual interviews, charts and summaries of news articles, and case law summary charts.

Please let me know if you have any questions.

Enclosures

cc: Tom Wilkey, Executive Director  
Julie Thompson-Hodgkins, General Counsel  
Gavin Gilmour, Associate General Counsel



# CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

## *Official Designation: Election Assistance Commission Standards Board*

The U.S. Election Assistance Commission (EAC) hereby Charters the Standards Board established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act.

### OBJECTIVES AND DUTIES

1. The objective of the Standards Board (the Board) is to advise the EAC through review of the voluntary voting systems guidelines (VVSG) described in title II Part 3 of the HAVA when the EAC proposes updates to the VVSG; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II of HAVA.

2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

### MEMBERSHIP

1. The Board shall consist of 110 members. Fifty-five members shall be State election officials selected by the chief State election official of each State. Fifty-five shall be local election officials selected under a process supervised by the chief election official of the State. The two members of the Standards Board who represent the same State may not be members of the same political party. (HAVA

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title II section 213 (a)). Vacancy appointments shall be made in the same manner as the original appointments.

2. The Board shall select nine of its members as an Executive Board of whom, not more than five may be State election officials; not more than five may be local election officials; and not more than five may be members of the same political party. Members of the Executive Board shall serve two year terms and may not serve more than three consecutive terms. Of the initial Executive Board, three members shall serve for one term; three shall serve for two consecutive terms; and three shall serve for three consecutive terms, as determined by lot at the time the members are first appointed (HAVA title II, section 213 (c)).

#### **ADMINISTRATIVE PROVISIONS**

1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be a member of the EAC staff designated by the Chairman of the EAC.

2. The Board will meet as necessary to carry out the functions, duties and responsibilities of the Standards Board and not less frequently than once every two years for purposes of selecting the Executive Board. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)).

3. The EAC will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)).

4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)).

5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)).

6. The annual cost for operating the Board is estimated at \$352,256.00 which includes one quarter staff year for support services.

7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law.

8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002.

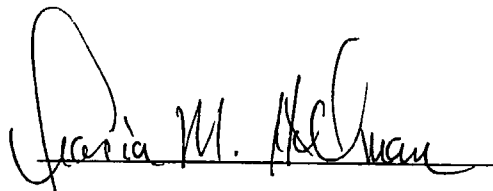
9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act.

#### DURATION

While the duration of the Board is continuing, the Charter shall be renewed every two years from the date of the filing.

8 July 2006

Date

  
Gracia M. Hillman, Commissioner

U.S. Election Assistance Commission

[Billing Code 6820- KF]

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## **CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION BOARD OF ADVISORS**

The U.S. Election Assistance Commission (EAC) hereby Charters the Board of Advisors established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act.

### **OBJECTIVES AND DUTIES**

1. The objective of the Board of Advisors (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212).

2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

### **MEMBERSHIP**

1. The Board shall consist of the following:

- Two members appointed by the National Governors Association.
- Two members appointed by the National Conference of State Legislatures.
- Two members appointed by the National Association

- of Secretaries of State.
- Two members appointed by the National Association of State Election Directors.
- Two members appointed by the National Association of Counties.
- Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.
- Two members appointed by the United States Conference of Mayors.
- Two members appointed by the Election Center.
- Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.
- Two members appointed by the United States Commission on Civil Rights.
- Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).
- The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.
- The Chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
- The director of the Federal Voting Assistance Program of the Department of Defense.
- Four members representing professionals in the field of science and technology, of whom—
  - (A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
  - (B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
- Eight members representing voter interests, of whom—

(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and (B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member. (HAVA title II section 214 (a)).

2. Vacancy appointments shall be made in the same manner as the original appointments.

3. Members of the Board shall serve for a term of 2 years and may be reappointed.

4. The Board shall elect a Chair from among its members.

#### **ADMINISTRATIVE PROVISIONS**

1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC.

2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)).

3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)).

4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)).

5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)).

6. The annual cost for operating the Board is estimated at \$100,000 which includes one quarter staff year for support services.

7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law.

8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002.

9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act.

#### **DURATION**

This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

**CHARTER OF THE  
U.S. ELECTION ASSISTANCE COMMISSION  
TECHNICAL GUIDELINES  
DEVELOPMENT COMMITTEE**

**ESTABLISHMENT:**

In accordance with the requirements of Section 221 of the Help America Vote Act of 2002 (P. L. 107-252), hereinafter referred to as the Act, the Election Assistance Commission (the "Commission") hereby establishes the Technical Guidelines Development Committee (the "Committee"), pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**OBJECTIVES AND DUTIES:**

Pursuant to 42 U.S.C. § 15361(b)(1), the Committee will act in the public interest to assist the Executive Director of the Commission in the development of the voluntary voting system guidelines.

**MEMBERS AND CHAIRPERSON:**

Membership: shall be composed of:

1. The Director of the National Institute of Standards and Technology (NIST) who shall serve as its chair.
2. A group of 14 other individuals appointed jointly by the Commission and the Director of NIST, consisting of the following:
  - A. An equal number of each of the following:  
Members of the Standards Board,  
Members of the Board of Advisors,  
Members of the Architectural and Transportation Barrier, and  
Compliance Board (Access Board).
  - B. A representative of the American National Standards Institute.
  - C. A representative of the IEEE.
  - D. Two representatives of the NASED selected by such Association who are not members of the Standards Board or Board of Advisors, and who are not of the same political party.
  - E. Other individuals with technical and scientific expertise relating to voting systems and voting equipment.



**ADMINISTRATIVE PROVISIONS:**

1. The Committee shall report to the Executive Director of the Commission.
2. Selected staff within NIST's Information Technology Laboratory will provide staff support for the Committee.
3. The Committee shall meet at least three times per year, quarterly. The Chair of the EAC shall call the first meeting of the Committee. Thereafter, the Chair of the EAC or the Chair of the TGDC may call a meeting of the Committee.
4. Members of the Committee shall not be compensated for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 et seq., while attending meetings of the Committee or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular places of business.
5. The Committee shall function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.
6. The annual cost of operating the Committee is estimated at \$2.8 million, including all direct and indirect expenses. It is estimated that six FTE will be required to support the TGDC.
7. The Committee shall not act in the absence of a quorum, which shall consist of a simple majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee, except that, if the number of members on the Committee is even, half will suffice.
8. The EAC will create any subcommittees of the TGDC that may be necessary to accomplish the TGDC's function. In addition, the EAC will establish such operating procedures as required to support the TGDC, consistent with the Federal Advisory Committee Act, as amended.

**DURATION:**

While the duration of the Committee is continuing, the Charter shall be renewed every two years from the date of filing.

**CHARTER FILING DATE:**

This Charter was filed on the 23 day of June, 2004.

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A.R.S. § 16-1001

**C**

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
     ☐ Chapter 7. Penal Provisions (Refs & Annos)  
       ☐ Article 1. General Provisions (Refs & Annos)

→ § 16-1001. Applicability of penal provisions

The provisions of this title defining crimes involving elections and crimes against the elective franchise, and prescribing penalties therefor, apply to any general, primary or special election or to any election called by a board of supervisors for any purpose for which the board is authorized by law to call an election.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

Source:

Pen. Code 1901, § 71.  
 Laws 1912, Ch. 83, § 1.  
 Pen. Code 1913, § 66.  
 Rev. Code 1928, § 4513.  
 Code 1939, § 43-1519.  
 A.R.S. former § 16-1311.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

LIBRARY REFERENCES

Elections ↪ 309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 324, 334.

A. R. S. § 16-1001, AZ ST § 16-1001

Current through End of the Forty-Seventh Legislature,  
 Second Regular Session (2006)

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A.R.S. § 16-1002

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
 Chapter 7. Penal Provisions (Refs & Annos)  
 Article 1. General Provisions (Refs & Annos)

**→§ 16-1002. Counterfeiting or distributing unlawful ballots; classification**

A person who counterfeits a ballot, or who circulates or gives to another a counterfeit ballot, knowing at the time that the ballot has not been issued pursuant to the election laws of the state, is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 52.  
 Pen. Code 1913, § 51.  
 Rev. Code 1928, § 4506.  
 Code 1939, § 43-1512.  
 A.R.S. former § 16-846.  
 Laws 1973, Ch. 183, § 32.  
 Laws 1978, Ch. 201, § 248.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Classification of offenses, see § 13-601 et seq.  
 Fines, see § 13-801 et seq.  
 Sentences of imprisonment, see § 13-701 et seq.

LIBRARY REFERENCES

Elections ⇨309.

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A.R.S. § 16-1003

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
   ▣ Chapter 7. Penal Provisions (Refs & Annos)  
     ▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1003. False endorsement, knowing destruction or delay in delivery of ballot; classification**

A person who knowingly forges or falsely makes the official endorsement of a ballot, knowingly destroys or defaces a ballot, or knowingly delays the delivery of a ballot, is guilty of a class 3 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Rev.Stat. 1901, §§ 2344 to 2348.  
 Rev.Stat. 1913, §§ 2970 to 2973.  
 Rev.Code 1928, § 1220.  
 Laws 1937, Ch. 13, § 1.  
 Laws 1952, Ch. 123, § 17.  
 Code 1939, Supp.1952, § 55-516.  
 A.R.S. former § 16-900.  
 Laws 1978, Ch. 201, § 283.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Culpable mental state, see § 13-105.

A. R. S. § 16-1003, AZ ST § 16-1003

Current through End of the Forty-Seventh Legislature,  
 Second Regular Session (2006)

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A.R.S. § 16-1004

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
 Chapter 7. Penal Provisions (Refs & Annos)  
 Article 1. General Provisions (Refs & Annos)

**→§ 16-1004. Interference with or corruption of election officer; interference with voting equipment; classification**

**A.** A person who at any election knowingly interferes in any manner with an officer of such election in the discharge of the officer's duty, or who induces an officer of an election or officer whose duty it is to ascertain, announce or declare the result of such election, to violate or refuse to comply with the officer's duty or any law regulating the election, is guilty of a class 5 felony.

**B.** A person who knowingly modifies the software, hardware or source code for voting equipment without receiving approval or certification pursuant to § 16-442 is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 2005, Ch. 144, § 5.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code, 1901, § 63.  
 Pen. Code 1913, § 62.

Rev.Code 1928, § 4512.  
 Code 1939, § 43-1518.  
 A.R.S. former § 16-1308.  
 Laws 1978, Ch. 201, § 295.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

The 2005 amendment by Ch. 144 rewrote the section, which had read:

"A person who at any election knowingly interferes in any manner with an officer of such election in the discharge of his duty, or who induces an officer of an election or officer whose duty it is to ascertain, announce or declare the result of such election, to violate or refuse to comply with his duty or any law regulating the election, is guilty of a

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A.R.S. § 16-1005

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 ▣ Chapter 7. Penal Provisions (Refs & Annos)  
 ▣ Article 1. General Provisions (Refs & Annos)

**→ § 16-1005. Early ballot abuse; classification**

Any person who knowingly marks or punches an early ballot with the intent to fix an election for his own benefit or for that of another person is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1999, Ch. 32, § 12.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Laws 1970, Ch. 151, § 85.  
 Laws 1972, Ch. 218, § 51.  
 A.R.S. former § 16-1111.  
 Laws 1977, Ch. 135, § 2.  
 Laws 1978, Ch. 201, § 289.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

The 1999 amendment by Ch. 32 substituted "early voting" for "absentee voting".

CROSS REFERENCES

Classification of offenses, see § 13-601 et seq.

Culpable mental state, see § 13-105.

Fines, see § 13-801 et seq.

Sentence of imprisonment, see § 13-701 et seq.

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A.R.S. § 16-1006

**C**

Arizona Revised Statutes Annotated Currentness

Title 16. Elections and Electors (Refs & Annos)

▣ Chapter 7. Penal Provisions (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1006. Changing vote of elector by corrupt means or inducement; classification**

**A.** It is unlawful for a person knowingly by force, threats, menaces, bribery or any corrupt means, either directly or indirectly:

1. To attempt to influence an elector in casting his vote or to deter him from casting his vote.
2. To attempt to awe, restrain, hinder or disturb an elector in the free exercise of the right of suffrage.
3. To defraud an elector by deceiving and causing him to vote for a different person for an office or for a different measure than he intended or desired to vote for.

**B.** A person who violates any provision of this section is guilty of a class 5 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, §§ 43, 61.  
 Pen. Code 1913, §§ 45, 60.  
 Rev.Code 1928, §§ 4501, 4502, 4510.  
 Code 1939, §§43-1507, 43-1508, 43-1516.  
 A.R.S. former §§ 16-1305, 16-1307.  
 Laws 1978, Ch. 201, § 294.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

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A.R.S. § 16-1007

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 Chapter 7. Penal Provisions (Refs & Annos)  
 Article 1. General Provisions (Refs & Annos)

**→§ 16-1007. Election officer ascertaining or disclosing elector's vote; classification**

An officer of an election, unless lawfully assisting a voter, is guilty of a class 2 misdemeanor, who knowingly:

1. Previous to the closing of the polls, attempts to find out for whom the elector has voted.
2. Opens or permits the folded ballot of an elector which has been delivered to the election official to be opened or examined previous to depositing it in the ballot box.
3. Makes or places a mark or device on a folded ballot with the intent to ascertain for whom any elector has voted.
4. Without consent of the elector, discloses the name of any person whom the election official has fraudulently or illegally discovered to have been voted for by the elector.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 57.  
 Pen. Code. 1913, § 56.  
 Rev.Code 1928, § 4508.  
 Code 1939, § 43-1514.  
 A.R.S. former § 16-898.  
 Laws 1970, Ch. 151, § 66.  
 Laws 1978, Ch. 201, § 281.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

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A.R.S. § 16-1008

**C**

Arizona Revised Statutes Annotated Currentness

Title 16. Elections and Electors (Refs & Annos)

▣ Chapter 7. Penal Provisions (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1008. Election officer changing vote of elector by menace or reward; classification**

An officer of an election who, while acting as such, knowingly induces an elector, either by menace, reward or promise thereof, to vote differently than the elector intended or desired to vote, is guilty of a class 2 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

**HISTORICAL AND STATUTORY NOTES**

**Source:**

Pen. Code 1901, § 61.  
 Pen. Code 1913, § 60.  
 Rev. Code 1928, § 4510.  
 Code 1939, § 43-1516.  
 A.R.S. former § 16-899.  
 Laws 1970, Ch. 151, § 67.  
 Laws 1978, Ch. 201, § 282.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

**CROSS REFERENCES**

Bribery and corruption, see § 13-2601 et seq.

**NOTES OF DECISIONS**

**Admissibility of evidence 1**

**1. Admissibility of evidence**

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A.R.S. § 16-1009

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     ▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1009. Failure or refusal to perform duty by election officer; classification**

A public officer upon whom a duty is imposed by this title, who knowingly fails or refuses to perform that duty in the manner prescribed by law, is guilty of a class 3 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

## &lt;&lt;ARTICLE 1. GENERAL PROVISIONS&gt;&gt;

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## HISTORICAL AND STATUTORY NOTES

**Source:**

Rev.Stat.1901, §§ 2344 to 2348.  
 Rev.Stat.1913, §§ 2968, 2970 to 2973.  
 Rev.Code 1928, § 1220.  
 Laws 1937, Ch. 13, § 1.  
 Laws 1952, Ch. 123, § 17.  
 Code 1939, Supp.1952, § 55-516.  
 A.R.S. former § 16-1309.  
 Laws 1978, Ch. 201, § 296.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

## LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 327.

A. R. S. § 16-1009, AZ ST § 16-1009

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A.R.S. § 16-1010

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▣ Article 1. General Provisions (Refs &amp; Annos)

**→ § 16-1010. Refusal by election officer to perform duty; violation of election law; classification**

A person charged with performance of any duty under any law relating to elections who knowingly refuses to perform such duty, or who, in his official capacity, knowingly acts in violation of any provision of such law, is guilty of a class 6 felony unless a different punishment for such act or omission is prescribed by law.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

## &lt;&lt;ARTICLE 1. GENERAL PROVISIONS&gt;&gt;

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 70.  
 Pen. Code 1913, § 65.  
 Rev. Code 1928, § 4513.  
 Code 1939, § 43-1519.  
 A.R.S. former § 16-1310.  
 Laws 1978, Ch. 201, § 297.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

## LIBRARY REFERENCES

Elections ⇨314.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 327.

A. R. S. § 16-1010, AZ ST § 16-1010

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 Second Regular Session (2006)

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A.R.S. § 16-1011

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 ▣ Article 1. General Provisions (Refs & Annos)

**→ § 16-1011. Counterfeiting election returns; classification**

A person who knowingly forges or counterfeits returns of an election purporting to have been held at a precinct or place where no election was in fact held, or who knowingly substitutes, forges or counterfeits returns of election instead of the true returns for a precinct or place where an election was actually held, is guilty of a class 4 felony.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 58.  
 Pen. Code 1913, § 57.  
 Rev. Code 1928, § 4509.  
 Code 1939, § 43-1515.  
 A.R.S. former § 16-961.  
 Laws 1978, Ch. 201, § 287.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

CROSS REFERENCES

Classification of offenses, see § 13-601 et seq.  
 Culpable mental state, see § 13-105.  
 Fines, see § 13-801 et seq.  
 Forgery and counterfeiting, see § 13-2001 et seq.  
 Sentences of imprisonment, see § 13-701 et seq.

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A.R.S. § 16-1012

**C**

Arizona Revised Statutes Annotated Currentness

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▣ Chapter 7. Penal Provisions (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1012. Intimidation of elector by employer; classification**

**A. It is unlawful for an employer knowingly:**

1. In paying employees the salary or wages due them, to enclose their pay in envelopes upon which there is written or printed any political mottoes, devices or arguments, containing threats, express or implied, intended or calculated to influence the political opinions, views or actions of the employees.

2. Within ninety days of an election provided by law, to put up or otherwise exhibit in any place where his employees are working or are present in the course of employment a handbill, notice or placard containing a threat, notice or information that if any particular ticket or candidate is elected or defeated work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

**B. An employer, whether acting in his individual capacity or as an officer or agent of a corporation, who violates a provision of this section is guilty of a class 1 misdemeanor.**

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

**HISTORICAL AND STATUTORY NOTES**

**Source:**

Pen. Code 1901, §§ 42, 43.

Pen. Code 1913, §§ 44, 45.

Rev. Code 1928, §§ 4500 to 4502.

Code 1939, §§ 43-1506 to 43-1508.

A.R.S. former §§ 16-1304 to 16-1306.

Laws 1978, Ch. 201, § 293.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1

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A.R.S. § 16-1013

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▣ Chapter 7. Penal Provisions (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

**→ § 16-1013. Coercion or intimidation of elector; classification**

**A.** It is unlawful for a person knowingly:

1. Directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election.

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever, to impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce or to prevail upon a voter either to cast or refrain from casting his vote at an election, or to cast or refrain from casting his vote for any particular person or measure at an election.

**B.** A person, whether acting in his individual capacity or as an officer or agent of a corporation, who violates a provision of this section is guilty of a class 1 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

**HISTORICAL AND STATUTORY NOTES**

**Source:**

Pen. Code 1901, § 42.

Pen. Code 1913, § 44.

Rev. Code 1928, § 4500.

Code 1939, § 43-1506.

A.R.S. former § 16-1303.

Laws 1978, Ch. 201, § 292.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1

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A.R.S. § 16-1014

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Title 16. Elections and Electors (Refs & Annos)

▣ Chapter 7. Penal Provisions (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1014. Corruption of electors; classification**

**A.** It is unlawful for a person, directly or indirectly, by himself or through any other person knowingly:

1. To treat, give, pay, loan, contribute, offer or promise money or other valuable consideration, or to give, offer or promise an office, place or employment, or to promise or to procure or endeavor to procure an office, place or employment, to or for a voter, or to or for any other person, to induce the voter to vote or refrain from voting at an election for any particular person or measure, or to induce the voter to go to the polls, or remain away from the polls at an election, or on account of the voter having voted or refrained from voting for any particular person or measure, or having gone to the polls or remained away from the polls at an election.

2. To advance or pay or cause to be paid, money or other valuable consideration to or for the use of any other person with the intent that it, or any part thereof, be used for bribery at any election provided by law, or to knowingly pay or cause to be paid money or other valuable thing to any person in discharge or repayment of money, wholly or in part expended for bribery at any election.

3. To receive, agree or contract for, before, during or after an election provided by law, money, gifts, loans or other valuable consideration, office, place or employment for himself or other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for refraining or agreeing to refrain from voting for a particular person or measure, or for inducing any person to vote or refrain from voting, or to vote or refrain from voting for a particular person or measure at an election.

**B.** A person violating any provision of this section is guilty of a class 2 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

**HISTORICAL AND STATUTORY NOTES**

**Source:**

Pen. Code 1901, §§ 38, 39.

Pen. Code 1913, §§ 39, 40.

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A.R.S. § 16-1015

**C**

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▣ Chapter 7. Penal Provisions (Refs &amp; Annos)

▣ Article 1. General Provisions (Refs &amp; Annos)

**→ § 16-1015. Election wagers; classification**

A person who, before or during an election provided by law, knowingly makes, offers or accepts a bet or wager, or takes a share or interest in, or in any manner becomes a party to the bet or wager, or provides or agrees to provide money to be used by another in making the bet or wager, upon any contingency whatever arising out of such election, is guilty of a class 2 misdemeanor.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

## &lt;&lt;ARTICLE 1. GENERAL PROVISIONS&gt;&gt;

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, §§ 41, 51.

Pen. Code 1913, §§ 42, 43.

Rev. Code 1928, § 4499.

Code 1939, § 43-1505.

A.R.S. former § 16-1302.

Laws 1978, Ch. 201, § 291.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

## CROSS REFERENCES

Challenging elector, grounds, see § 16-591.

## LIBRARY REFERENCES

Elections ↻315.

Westlaw Topic No. 144.

C.J.S. Elections § 328.

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A.R.S. § 16-1016

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▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1016. Illegal voting; pollution of ballot box; removal or destruction of ballot box, poll lists or ballots; classification**

A person is guilty of a class 5 felony who:

1. Not being entitled to vote, knowingly votes.
2. Knowingly votes more than once at any election.
3. Knowingly gives to an election official two or more ballots folded together.
4. Knowingly changes or destroys a ballot after it has been deposited in the ballot box.
5. Knowingly adds a ballot to those legally cast at any election, by fraudulently introducing the ballot into the ballot box either before or after the ballots therein have been counted.
6. Knowingly adds to or mixes with ballots lawfully cast, other ballots, while they are being canvassed or counted, with intent to affect the result of the election, or to exhibit the ballots as evidence on the trial of an election contest.
7. Knowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof.
8. Knowingly destroys a polling list, ballot or ballot box with the intent to interrupt or invalidate the election.
9. Knowingly detains, alters, mutilates or destroys ballots or election returns.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Pen. Code 1901, § 62.

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A.R.S. § 16-1017

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▣ Chapter 7. Penal Provisions (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

**→ § 16-1017. Unlawful acts by voters with respect to voting; classification**

A voter who knowingly commits any of the following acts is guilty of a class 2 misdemeanor:

1. Makes a false statement as to the voter's inability to mark a ballot.
2. Interferes with a voter within the seventy-five foot limit of the polling place as posted by the election marshal or within seventy-five feet of the main outside entrance to an on-site early voting location established by a county recorder pursuant to § 16-542, subsection A.
3. Endeavors while within the seventy-five foot limit for a polling place or on-site early voting location to induce a voter to vote for or against a particular candidate or issue.
4. Prior to the close of an election defaces or destroys a sample ballot posted by election officers, or defaces, tears down, removes or destroys a card of instructions posted for the instruction of voters.
5. Removes or destroys supplies or conveniences furnished to enable a voter to prepare the voter's ballot.
6. Hinders the voting of others.
7. Votes in a county in which the voter no longer resides, except as provided in § 16-125.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1993, Ch. 98, § 67, eff. Jan. 1, 1994; Laws 1999, Ch. 32, § 13; Laws 2005, Ch. 98, § 12.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

**HISTORICAL AND STATUTORY NOTES**

**Source:**

Rev.Stat. 1901, §§ 2344 to 2348.

Rev.Stat. 1913, §§ 2968, 2970 to 2973.

Rev.Code 1928, § 1220.

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A.R.S. § 16-1018

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**→ § 16-1018. Additional unlawful acts by persons with respect to voting; classification**

A person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Knowingly electioneers on election day within a polling place or in a public manner within seventy-five feet of the main outside entrance of a polling place or on-site early voting location established by a county recorder pursuant to § 16-542, subsection A.
2. Intentionally disables or removes from the polling place, on-site early voting location or custody of an election official a voting machine or a voting record.
3. Knowingly removes an official ballot from a polling place before closing the polls.
4. Shows the voter's ballot or the machine on which the voter has voted to any person after it is prepared for voting in such a manner as to reveal the contents, except to an authorized person lawfully assisting the voter.
5. Knowingly solicits a voter to show the voter's ballot, or receives from a voter a ballot prepared for voting, unless the person is an election official or unless otherwise authorized by law.
6. Knowingly receives an official ballot from a person other than an election official having charge of the ballots.
7. Knowingly delivers an official ballot to a voter, unless the voter is an election official.
8. Except for a completed ballot transmitted by an elector by fax pursuant to § 16-543, knowingly places a mark on the voter's ballot by which it can be identified as the one voted by the voter.
9. After having received a ballot as a voter, knowingly fails to return the ballot to the election official before leaving the polling place or on-site early voting location.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1993, Ch. 98, § 68, eff. Jan. 1, 1994; Laws 1999, Ch. 32, § 14; Laws 2000, Ch. 249, § 32, eff. Sept. 1, 2000; Laws 2003, Ch. 38, § 4.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

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A.R.S. § 16-1019

**C**

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
 ▣ Chapter 7. Penal Provisions (Refs & Annos)  
 ▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1019. Political signs; tampering; classification**

**A.** It is a class 2 misdemeanor for any person to knowingly remove, alter, deface or cover any political sign of any candidate for public office for the period commencing forty-five days prior to a primary election and ending seven days after the general election.

**B.** The provisions of this section shall not apply to the removal, alteration, defacing or covering of a political sign by the candidate or the authorized agent of the candidate in support of whose election the sign was placed, or by the owner or authorized agent of the owner of private property on which such signs are placed with or without permission of the owner, or placed in violation of state law, or county, city or town ordinance or regulation.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

**Source:**

Laws 1962, Ch. 124, § 1.  
 A.R.S. former § 16-1312.  
 Laws 1978, Ch. 201, § 298.

For conditional enactment and effective date provisions and purpose of Laws 1979, Ch. 209 and for information as to compliance with the conditional enactment provision, see Historical and Statutory Notes preceding Chapter 1 and following § 16-101.

LIBRARY REFERENCES

Elections ↻309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 324, 334.

A. R. S. § 16-1019, AZ ST § 16-1019

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A.R.S. § 16-1020

**C**

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
 ☞ Chapter 7. Penal Provisions (Refs & Annos)  
 ☞ Article 1. General Provisions (Refs & Annos)

**→ § 16-1020. Signing of petitions; violation; classification**

A person knowingly signing any name other than his own to a nomination petition or a petition for formation, alteration or dissolution of a special district, except in a circumstance where he signs for a person, in the presence of and at the specific request of such person who is incapable of signing his own name because of physical infirmity, or knowingly signing his name more than once to a nomination petition or a petition for formation, alteration or dissolution of a special district, or who is not at the time of signing a qualified elector entitled to vote at the election initiated by the petition, is guilty of a class 1 misdemeanor.

CREDIT(S)

Added by Laws 1981, Ch. 227, § 8.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

## LIBRARY REFERENCES

Elections ☞ 309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 324, 334.

A. R. S. § 16-1020, AZ ST § 16-1020

Current through End of the Forty-Seventh Legislature,  
 Second Regular Session (2006)

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A.R.S. § 16-1021

**C**

Arizona Revised Statutes Annotated Currentness  
 Title 16. Elections and Electors (Refs & Annos)  
 ▣ Chapter 7. Penal Provisions (Refs & Annos)  
 ▣ Article 1. General Provisions (Refs & Annos)

**→§ 16-1021. Enforcement by attorney general and county, city or town attorney**

In any election for state office, members of the legislature, justices of the supreme court, judges of the court of appeals or statewide initiative or referendum the attorney general may enforce the provisions of this title through civil and criminal actions. In any election for county, city or town office, community college district governing board, judge or a county, city or town initiative or referendum, the appropriate county, city or town attorney may enforce the provisions of this title through civil and criminal actions. In any special district election, the county attorney of any county in which the district or a portion of the district is located or the attorney general may enforce the laws governing such election.

CREDIT(S)

Added by Laws 1985, Ch. 292, § 19. Amended by Laws 1986, Ch. 320, § 30.

<<ARTICLE 1. GENERAL PROVISIONS>>

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES

The 1986 amendment added the last sentence, relating to special district elections.

**Reviser's Notes:**

**1985 Note.** Pursuant to authority of § 41-1304.02, in the section heading "Enforcement by" was substituted for "Powers of".

A. R. S. § 16-1021, AZ ST § 16-1021

Current through End of the Forty-Seventh Legislature,  
 Second Regular Session (2006)

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C.G.S.A. § 9-350

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→§ 9-350. Failure to warn election

Any person whose duty it is to warn any election and who fails to warn such election as required by law shall be fined not more than five hundred dollars.

CREDIT(S)

(1949 Rev., § 1118; 1953, Supp. § 671c; 1955, Supp. § 827d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Derivation:

1902 Rev., § 1704.

1918 Rev., § 653.

1930 Rev., § 663.

CROSS REFERENCES

Procedure upon summons for infraction or violation under this section, payment by mail, and procedure at trial, see C.G.S.A. § 51-164n.

Publication of notices, see C.G.S.A. § 1-2.

Warning of elections, see C.G.S.A. § 9-226.

LIBRARY REFERENCES

2002 Main Volume

Elections ↪314, 323.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 355.

C. G. S. A. § 9-350, CT ST § 9-350

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C.G.S.A. § 9-351

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→ § 9-351. Delay in counting or declaring vote

Any moderator of any election or voting district who, wilfully and without cause, delays the counting or declaration of the number of votes cast shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned not less than six months nor more than one year.

CREDIT(S)

(1949 Rev., § 1119; 1953, Supp. § 672c; 1955, Supp. § 828d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Derivation:

1902 Rev., § 1705.

1918 Rev., § 654.

1930 Rev., § 664.

CROSS REFERENCES

Canvass and returns, see C.G.S.A. § 9-307 et seq.

Contests, see C.G.S.A. § 9-324.

LIBRARY REFERENCES

2002 Main Volume

Elections 314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

C. G. S. A. § 9-351, CT ST § 9-351

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C.G.S.A. § 9-352

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→ § 9-352. Tampering with machine by election official**

Any election official who, with intent to cause or permit any voting machine to fail to correctly register all votes cast thereon, tampers with or disarranges such machine in any way or any part or appliance thereof, or causes such machine to be used or consents to its being used for voting at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted to correctly register all votes cast thereon, or who, for the purpose of defrauding or deceiving any elector or of causing it to be doubtful for what candidate or candidates or proposition any vote is cast, or causing it to appear upon such machine that votes cast for one candidate or proposition were cast for another candidate or proposition, removes, changes or mutilates any ballot label on such machine or any part thereof, shall be fined not more than one thousand dollars or imprisoned not more than five years or both.

CREDIT(S)

(1949 Rev., § 1220; 1953, Supp. § 673c; 1955, Supp. § 829d; 1987, P.A. 87-382, § 36, eff. June 23, 1987.)

## HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1987 Amendment.** 1987, P.A. 87-382, § 36, deleted references to "ticket" throughout the section, and made corresponding language and punctuation changes.

**Derivation:**

1903, P.A. ch. 207.

1909, P.A. ch. 262.

1918 Rev., § 731.

1930 Rev., § 742.

## CROSS REFERENCES

Voting machines, see C.G.S.A. Const. Art. 6, § 5; C.G.S.A. § 9-238 et seq.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 314, 323, 332.

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C.G.S.A. § 9-353

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→ § 9-353. False return

Any election official who, at the close of the polls, purposely causes the vote registered on the machine to be incorrectly taken down as to any candidate or proposition voted on, or who knowingly causes to be made or signed any false statement, certificate or return of any kind, of such vote, or who knowingly consents to any such act, shall be fined not more than one thousand dollars or imprisoned not more than five years or both.

CREDIT(S)

(1949 Rev., § 1221; 1953, Supp. § 674c; 1955, Supp. § 830d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1903, P.A. ch. 207.

1909, P.A. ch. 262.

1918 Rev., § 732.

1930 Rev., § 743.

CROSS REFERENCES

Voting machines, see C.G.S.A. Const. Art. 6, § 5; C.G.S.A. § 9-238 et seq.

LIBRARY REFERENCES

2002 Main Volume

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

C. G. S. A. § 9-353, CT ST § 9-353

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C.G.S.A. § 9-354

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-354. Improper printing of ballot label**

Any person who prints or causes to be printed upon any official ballot label the name of any person not a candidate of a party whose name is printed at the head of the column containing such nominees or who prints or causes to be printed any authorized ballot label in any manner other than that prescribed by the Secretary of the State shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned not more than five years or be both fined and imprisoned.

CREDIT(S)

(1953, Supp. § 675c; 1955, Supp. § 831d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1953, Supp. § 675c.

LIBRARY REFERENCES

2002 Main Volume

Elections 309.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 334.

C. G. S. A. § 9-354, CT ST § 9-354

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C.G.S.A. § 9-355

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-355. Official neglect or fraud**

Any person who, without reasonable cause, neglects to perform any of the duties required of him by the laws relating to elections or primaries and for which neglect no other punishment is provided, and any person who is guilty of fraud in the performance of any such duty, and any person who makes any unlawful alteration in any list required by law, shall be fined not more than three hundred dollars or be imprisoned not more than one year or be both fined and imprisoned. Any official who is convicted of fraud in the performance of any duty imposed upon him by any law relating to the registration or admission of electors or to the conduct of any election shall be disfranchised. Any public officer or any election official upon whom any duty is imposed by part I of chapter 147 and sections 9-308 to 9-311, inclusive, who wilfully omits or neglects to perform any such duty or does any act prohibited therein for which punishment is not otherwise provided shall be fined not more than two thousand dollars or imprisoned not more than three years or both.

CREDIT(S)

(1949 Rev., §§ 1121, 1217; 1953, Supp. § 676c; 1955, Supp. § 832d; 1980, P.A. 80-432, § 1, eff. Oct. 1, 1980.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1980 Amendment.** 1980, P.A. 80-432, § 1, inserted, in the first sentence, "or primaries" following "laws relating to elections".

**Derivation:**

1902 Rev., § 1709.

1918 Rev., § 658.

1930 Rev., § 668.

**CROSS REFERENCES**

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

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C.G.S.A. § 9-357

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-357. Fraudulent registration**

Any person who fraudulently procures himself or another to be registered as an elector shall be fined not more than five hundred dollars or imprisoned not more than one year or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1029; 1953, Supp. § 678c; 1955, Supp. § 834d.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Derivation:**

1902 Rev., § 1708.

1918 Rev., § 657.

1930 Rev., § 667.

**CROSS REFERENCES**

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

**LIBRARY REFERENCES**

2002 Main Volume

Elections ↪312.

Westlaw Topic No. 144.

C.J.S. Elections § 326.

C. G. S. A. § 9-357, CT ST § 9-357

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C.G.S.A. § 9-358

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

▣ Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→§ 9-358. False swearing before registrar, moderator, board or State Elections Enforcement Commission**

Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters, any moderator of any election, primary or referendum, any board for admission of electors or the State Elections Enforcement Commission, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election, primary or referendum is being passed upon and decided, shall be guilty of a class D felony and shall be disfranchised.

CREDIT(S)

(1949 Rev., § 1126; 1953, Supp. § 679c; 1955, Supp. § 835d; 2005, P.A. 05-235, § 8, eff. July 1, 2005; 2006, P.A. 06-196, § 57, eff. June 7, 2006.)

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

**Codification**

Section heading was changed to conform to the 2006 Supplement to the Connecticut General Statutes.

**Amendments**

**2005 Amendment.** 2005, P.A. 05-235, § 8, rewrote this section, which prior thereto read:

"Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters or the moderator of any election or any board for admission of electors, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election is before such registrar, moderator or board for the purpose of being passed upon and decided, shall be imprisoned not more than two years and shall be disfranchised."

**2006 Amendment.** 2006, P.A. 06-196, § 57, substituted "is" for "for the purpose of", and made technical corrections.

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**Derivation:**

1945, Supp. § 146h.

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C.G.S.A. § 9-359

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-359. Absentee ballots**

Any (1) person who executes an absentee ballot for the purpose of informing any other person how he votes, or procures any absentee ballot to be prepared for such purpose, (2) municipal clerk or moderator, elector appointed to count any absentee ballot or other person who wilfully attempts to ascertain how any elector marked his absentee ballot or how it was cast, (3) person who unlawfully opens or fills out, except as provided in section 9-140a with respect to a person unable to write, any elector's absentee ballot signed in blank, (4) person designated under section 9-140a who executes an absentee ballot contrary to the elector's wishes, or (5) person who wilfully violates any provision of chapter 145, [FN1] shall be guilty of a class D felony.

CREDIT(S)

(1949 Rev., § 1149; 1953, Supp. § 680c; 1955, Supp. § 836d; 1974, P.A. 74-96, § 8, eff. Jan. 1, 1975; 1986, P.A. 86-179, § 45, eff. Jan. 1, 1987; 1995, P.A. 95-177, § 4, eff. Jan. 1, 1996.)

[FN1] C.G.S.A. § 9-133f et seq.

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Amendments**

**1974 Amendment.** 1974, P.A. 74-96, § 8, substituted, at the end, "guilty of a Class D felony" for "subject to the penalties provided in section 9-306" following "chapter 145, shall be".

**1986 Amendment.** 1986, P.A. 86-179, § 45, changed a citation.

**1995 Amendment.** 1995, P.A. 95-177, § 4, among other changes, inserted subd. (1), (2), (3) and (5) designations and added subd. (4).

**Derivation:**

1935, Supp. § 168c(h).

1943, Supp. § 146g(j).

1945, Supp. § 174h.

**CROSS REFERENCES**

Accelerated pretrial rehabilitation, inapplicability to person charged with violation of this section, see C.G.S.A. § 54-56e.

Claimed violations in the casting of absentee ballots, see C.G.S.A. § 9-323.

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C.G.S.A. § 9-359a

Connecticut General Statutes Annotated Currentness

Title 9. Elections

☐ Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

→ § 9-359a. False statement in absentee balloting. Class D felony

(a) A person is guilty of false statement in absentee balloting when he intentionally makes a false written statement in or on or signs the name of another person to the application for an absentee ballot or the inner envelope accompanying any such ballot, which he does not believe to be true and which statement or signature is intended to mislead a public servant in the performance of his official function.

(b) False statement in absentee balloting is a class D felony.

CREDIT(S)

(1974, P.A. 74-96, § 1, eff. Jan. 1, 1975.)

CROSS REFERENCES

Accelerated pretrial rehabilitation, inapplicability to person charged with violation of this section, see C.G.S.A. § 54-56e.

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Felony, defined, see C.G.S.A. § 53a-25.

Investigation of violations relating to election, referendum or primary, see C.G.S.A. § 9-7b.

Provisional ballots, applications for, see C.G.S.A. § 9-232i.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

ADMINISTRATIVE CODE REFERENCES

Elections Commission, subpoenas, see Regs. Conn. State Agencies, § 9-7b-28.

LIBRARY REFERENCES

2002 Main Volume

Elections ☞ 216.1, 318, 332.

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C.G.S.A. § 9-360

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

▣ Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-360. Fraudulent voting**

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, fraudulently votes more than once at the same meeting, primary, election or referendum, shall be fined not less than three hundred dollars or more than five hundred dollars and shall be imprisoned not less than one year or more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised.

CREDIT(S)

(1949 Rev., §§ 1122, 1125; 1953, Supp. § 681c; 1955, Supp. § 837d; 1982, P.A. 82-176, § 1, eff. July 1, 1982; 2005, P.A. 05-235, § 9, eff. July 1, 2005; 2006, P.A. 06-196, § 58, eff. June 7, 2006.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Amendments**

2006 Electronic Pocket Part Update

**2005 Amendment.** 2005, P.A. 05-235, § 9, rewrote this section, which prior thereto read:

"Any person not legally qualified who fraudulently votes in any town meeting, primary or election in which he is not qualified to vote, and any legally qualified person who, at such meeting, primary or election, fraudulently votes more than once at the same meeting, primary or election, shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary or town meeting by assuming the name of another who is registered or enrolled, as the case may be, shall be fined five hundred dollars and be imprisoned one year and shall be disfranchised."

**2006 Amendment.** 2006, P.A. 06-196, § 58, made technical corrections.

**1982 Amendment.** 1982, P.A. 82-176, § 1, amended the first sentence by substituting ", primary or" for "or in any" following "in any town meeting", and by inserting "meeting, primary or" following "person who, at such" and following "once at the same"; and amended the second sentence by inserting ", primary" following "vote at any election", and by inserting "or enrolled, as the case may be," following "who is registered".

**Derivation:**

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C.G.S.A. § 9-361

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs &amp; Annos)

**→§ 9-361. Primary or enrollment violations**

The following persons shall be guilty of primary or enrollment violations: (1) Any person unlawfully voting or participating or attempting to vote or participate in any primary in which he is not eligible to vote or participate; (2) in towns divided into voting districts, any elector who registers or votes at any primary in a voting district other than the district in which such elector is legally entitled to vote at the time of such primary; (3) any elector who signs the name of another to a written application to register, without the knowledge and consent of the person whose name is signed thereto, or who falsely represents the contents of any written or printed form of application for enrollment with intent to secure the application of an elector for enrollment upon a list other than that of his true political preference; (4) any registrar or deputy registrar of voters who fails to hold sessions as provided in sections 9-51 and 9-53 or who fails to register an elector upon the oral or written application for enrollment of such elector, except as provided by law, or who fails to erase an elector's name as provided in section 9-59 or who registers any elector upon an enrollment list other than that declared by such elector in his application as his political preference, or who removes or erases the name of any elector from any enrollment list except as provided by law; (5) any person who fails to properly serve any notice or citation required by sections 9-60 and 9-61 when directed so to do by any registrar or deputy registrar, or who makes any false return as to any such notice or citation; and (6) any moderator of a primary of the enrolled electors of a specified party, such primary being legally called for the nomination of candidates for any public elective office, who fails to comply with the requirements of chapter 153. [FN1] The penalty for any such violation shall be a fine of not more than one hundred dollars or imprisonment of not more than sixty days, or both, except that any person found to have violated subdivision (1) or (2) of this section shall be guilty of a class D felony and shall be disfranchised.

## CREDIT(S)

(1949 Rev., § 1186; 1953, Supp. § 682c; June, 1955, Supp. § 838d; Nov., 1955, Supp. § N114; 1987, P.A. 87-509, § 12, eff. June 24, 1987; 2003, P.A. 03-241, § 16, eff. Jan. 1, 2004; 2005, P.A. 05-235, § 10, eff. July 1, 2005.)

[FN1] C.G.S.A. § 9-372 et seq.

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

**Amendments**

**2003 Amendment.** 2003, P.A. 03-241, § 16, deleted "or for the election of delegates to any political convention," following "any public elective office,"; made other nonsubstantive changes.

**2005 Amendment.** 2005, P.A. 05-235, § 10, inserted ", except that any person found to have violated subdivision (1) or (2) of this section shall be guilty of a class D felony and shall be disfranchised".

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C.G.S.A. § 9-362

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-362. Decision of election officials no bar to prosecution**

The decision of the board for admission of electors or of the registrars or of a moderator, as to a person's right to be admitted to the elector's oath, to registration or to cast his vote, shall, in no case, be a bar to a criminal prosecution for procuring himself to be made an elector or to be registered or for voting, without the qualifications required by law.

CREDIT(S)

(1949 Rev., § 1115; 1953, Supp. § 683c; 1955, Supp. § 839d.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Derivation:**

1902 Rev., § 1692.

1918 Rev., § 648.

1930 Rev., § 660.

**CROSS REFERENCES**

Admission of electors, see C.G.S.A. § 9-20.

**LIBRARY REFERENCES**

2002 Main Volume

Elections ↔321.

Westlaw Topic No. 144.

C.J.S. Elections § 335.

C. G. S. A. § 9-362, CT ST § 9-362

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C.G.S.A. § 9-363

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

▣ Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-363. Circulation of misleading instructions**

Any person who, with intent to defraud any elector of his vote or cause any elector to lose his vote or any part thereof, gives in any way, or prints, writes or circulates, or causes to be written, printed or circulated, any improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any machine, the following of which or any part of which would cause any elector to lose his vote or any part thereof, or would cause any elector to fail in whole or in part to register or record the same on the machine for the candidates of his choice, shall be fined not more than five hundred dollars or be imprisoned not more than five years or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1222; 1953, Supp. § 684c; 1955, Supp. § 840d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1710.

1918 Rev., § 659.

1930 Rev., § 669.

LAW REVIEW AND JOURNAL COMMENTARIES

Corporate assertion of political power. John P. Maloney, 12 Conn.L.Rev. 14 (1979).

LIBRARY REFERENCES

2002 Main Volume

Elections ↻ 318, 323, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353, 355.

C. G. S. A. § 9-363, CT ST § 9-363

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C.G.S.A. § 9-364

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-364. Influencing elector to refrain from voting**

Any person who influences or attempts to influence any elector to stay away from any election shall be fined not more than five hundred dollars and imprisoned not more than one year nor less than three months.

CREDIT(S)

(1949 Rev., § 1123; 1953, Supp. § 685c; 1955, Supp. § 841d.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Derivation:**

1902 Rev., § 1711.

1918 Rev., § 660.

1930 Rev., § 670.

**CROSS REFERENCES**

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

**LIBRARY REFERENCES**

2002 Main Volume

Elections ↪ 319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

C. G. S. A. § 9-364, CT ST § 9-364

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C.G.S.A. § 9-364a

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-364a. Acts prohibited in elections, primaries, referenda, caucuses and conventions. Penalties**

Any person who influences or attempts to influence by force or threat the vote, or by force, threat, bribery or corrupt means, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be fined not more than one thousand dollars or imprisoned not more than one year or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1162; 1953, Supp. § 665c; 1955, Supp. § 821d; 1958, Rev., § 9- 344; 1974, P.A. 74-189, § 10, eff. May 22, 1974; 1981, P.A. 81-467, § 7, eff. July 1, 1981; 1982, P.A. 82-176, § 2, eff. July 1, 1982.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Transfer of Section**

This section, formerly set out as C.G.S.A. § 9-344, was transferred to C.G.S.A. § 9-364a in Gen.St., Rev. to 1977.

**Amendments**

**1974 Amendment.** 1974, P.A. 74-189, § 10, amended section by inserting "referendum" following "in a primary caucus"; substituted "suppresses" for "suppress" following "fraudulently"; and substituted fine not "more than one thousand dollars or imprisoned not more than one year" for "less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than seven days nor more than three months".

**1981 Amendment.** 1981, P.A. 81-467, § 7, deleted "or wilfully and knowingly votes more than once or casts more than one ballot at a time when he is entitled to vote but once or cast but one ballot;" following "referendum or convention;"

**1982 Amendment.** 1982, P.A. 82-176, § 2, substituted "convention or election" for "or convention" following "primary, caucus, referendum".

**Derivation:**

1902 Rev., § 1699.

1918 Rev., § 676.

1930 Rev., § 686.

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C.G.S.A. § 9-365

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-365. Employers' threats**

Any person who, at or within sixty days prior to any election, municipal meeting, school district election or school district meeting, attempts to influence the vote of any operative in his employ by threats of withholding employment from him or by promises of employment or who dismisses any operative from his employment on account of any vote he has given at any such election or meeting shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned not less than six months nor more than twelve months or be both fined and imprisoned.

CREDIT(S)

(1949 Rev., § 1116; 1953, Supp. § 686c; 1955, Supp. § 842d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Derivation:**

1902 Rev., § 1700.

1918 Rev., § 650.

1930 Rev., § 661.

CROSS REFERENCES

Elections and primaries, contests and complaints in election of state officers and judges of probate, see C.G.S.A. § 9-324.

Violation in casting of absentee ballot at referendum, complaint for relief by aggrieved person, see C.G.S.A. § 9-371b.

Voting errors and election law violations, contests and complaint procedures, see C.G.S.A. § 9-323.

LAW REVIEW AND JOURNAL COMMENTARIES

Labor and Employment Law. Brian Clemow, 54 Conn.B.J. 473 (1980).

LIBRARY REFERENCES

2002 Main Volume

Elections ↪320.

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C.G.S.A. § 9-366

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-366. Interference with electors in voting**

Any person who induces or attempts to induce any elector to write, paste or otherwise place, on a write-in ballot voted on a voting machine at any election, any name, sign or device of any kind, as a distinguishing mark by which to indicate to another how such elector voted, or enters into or attempts to form any agreement or conspiracy with any person to induce or attempt to induce electors or any elector to so place any distinguishing mark on such ballot, or attempts to induce any elector to do anything with a view to enabling another person to see or know for what persons or any of them such elector votes on such machine, or enters into or attempts to form any agreement or conspiracy to induce any elector to do any act for the purpose of enabling another person or persons to see or know for what person or persons such elector votes, or attempts to induce any person to place himself in such position, or to do any other act for the purpose of enabling him to see or know for what candidates any elector other than himself votes on such machine, or himself attempts to get in such position to do any act so that he will be enabled to see or know how any elector other than himself votes on such machine, or does any act which invades or interferes with the secrecy of the voting or causes the same to be invaded or interfered with, shall be imprisoned not more than five years.

CREDIT(S)

(1949 Rev., § 1219; 1953, Supp. § 687c; 1955, Supp. § 843d; 1987, P.A. 87-382, § 37, eff. June 23, 1987.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

**Amendments**

**1987 Amendment.** 1987, P.A. 87-382, § 37, deleted references to "ticket" throughout the section, and made corresponding language and punctuation changes.

**Derivation:**

1903, P.A. ch. 207.  
 1909, P.A. ch. 262.  
 1918 Rev., § 730.  
 1930 Rev., § 741.  
 1943, Supp. § 155g.

**CROSS REFERENCES**

Distance markers, see C.G.S.A. § 9-236.

News media at polling place, see C.G.S.A. § 9-236.

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C.G.S.A. § 9-367

Connecticut General Statutes Annotated Currentness

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→ § 9-367. Tampering with voting machine

Any person, not being an election official, who, during any election or before any election, after a voting machine has had placed upon it the ballot label for such election, tampers with such machine, disarranges, defaces, injures or impairs the same in any manner, or mutilates, injures or destroys any ballot label placed thereon or to be placed thereon, or any other appliance used in connection with such machine, shall be imprisoned for not more than five years.

CREDIT(S)

(1949 Rev., § 1218; 1953, Supp. § 688c; 1955, Supp. § 844d.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Derivation:

1903, P.A. ch. 207.

1909, P.A. ch. 262.

1918 Rev., § 728.

1930 Rev., § 740.

CROSS REFERENCES

Voting machines, see C.G.S.A. § 9-238 et seq.

LIBRARY REFERENCES

2002 Main Volume

Elections ↻309, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 334, 353.

C. G. S. A. § 9-367, CT ST § 9-367

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C.G.S.A. § 9-368

**C**

Connecticut General Statutes Annotated Currentness

Title 9. Elections

▣ Chapter 151. Elections: Prohibited Acts and Penalties (Refs & Annos)

**→ § 9-368. Arrest of accused**

Upon the written complaint of any three electors of a town in which a violation of any law relating to elections has occurred to any judge of the superior court for the judicial district within which the offense has been committed, supported by oath or affirmation that the complainants have good reason to believe and do believe that the allegations therein contained are true and can be proved, such judge shall issue a warrant for the arrest of the accused.

CREDIT(S)

(1953, Supp. § 689c; 1955, Supp. § 845d; 1959, P.A. 28, § 167; 1974, P.A. 74-183, § 187, eff. Dec. 31, 1974; 1976, P.A. 76-436, § 163, eff. July 1, 1978; 1978, P.A. 78-280, § 1, eff. July 1, 1978.)

**HISTORICAL AND STATUTORY NOTES**

2002 Main Volume

**Amendments**

**1974 Amendment.** 1974, P.A. 74-183, § 187, substituted "court of common pleas for the county or judicial district" for "circuit court for the circuit".

**1976 Amendment.** 1976, P.A. 76-436, § 163, substituted "superior court" for "court of common pleas" following "to any judge of the".

**1978 Amendment.** 1978, P.A. 78-280, § 1, provided for change of terms from "county" or "county or judicial district" to "judicial district".

**CROSS REFERENCES**

Inconsistent special acts repealed, see C.G.S.A. § 51-274.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Protecting the right to vote. 78 Yale L.J. 662 (1969).

**LIBRARY REFERENCES**

2002 Main Volume

Criminal Law ⇌ 217.

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C.G.S.A. § 9-368c

Connecticut General Statutes Annotated Currentness

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**→§ 9-368c. Misrepresentation of contents of a petition**

(a) No person shall intentionally misrepresent the contents of a petition circulated under title 9.

(b) Any person who violates any provision of this section shall be guilty of a class D felony.

CREDIT(S)

(1987, P.A. 87-530.)

LIBRARY REFERENCES

2002 Main Volume

Elections ↪318.

Westlaw Topic No. 144.

C.J.S. Elections § 331.

C. G. S. A. § 9-368c, CT ST § 9-368c

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C.R.S.A. § 1-13-101

**C**

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 1. Offenses--General Provisions

**→§ 1-13-101. District attorney or attorney general to prosecute**

(1) Any person may file an affidavit with the district attorney stating the name of any person who has violated any of the provisions of this code and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, he shall prosecute the violator.

(2) The attorney general shall have equal power with district attorneys to file and prosecute informations or complaints against any persons for violating any of the provisions of this code.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪326.

Westlaw Topic No. 144.

C.J.S. Elections § 338.

NOTES OF DECISIONS

**Injunctions 1**

1. Injunctions

The state, through its Attorney General, may maintain a bill in equity in its sovereign capacity to enjoin a conspiracy to commit illegal and fraudulent acts which will result in the pollution of the ballot box and the perversion of an election, though the acts charged if committed, constitute criminal offenses. *People v. Tool*, 1905, 86 P. 224, 35 Colo. 225, 117 Am.St.Rep. 198. States ↪ 192

The interest of the state in a pure election is not limited to the protection which may be afforded by the punishment of those, through criminal prosecutions, who violate the laws relating to elections by padding registration lists, permitting repeating, and falsifying election returns, but equity will afford protection by enjoining the crime. *People v. Tool*, 1905, 86 P. 224, 35 Colo. 225, 117 Am.St.Rep. 198. Injunction ↪ 78

C. R. S. A. § 1-13-101, CO ST § 1-13-101

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C.R.S.A. § 1-13-102

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 1. Offenses--General Provisions

**→§ 1-13-102. Sufficiency of complaint--judicial notice**

Irregularities or defects in the mode of calling, giving notice of, convening, holding, or conducting any general, primary, or congressional vacancy election authorized by law constitute no defense to a prosecution for a violation of this code. When an offense is committed in relation to any general, primary, or congressional vacancy election, an indictment, information, or complaint for such offense is sufficient if it alleges that such election was authorized by law without stating the call or notice of the election, the names of the judges holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any general, primary, or congressional vacancy election.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪321, 328(1).  
 Evidence ↪45.  
 Westlaw Topic Nos. 144, 157.  
 C.J.S. Elections §§ 335, 345, 346.  
 C.J.S. Evidence § 51.

C. R. S. A. § 1-13-102, CO ST § 1-13-102

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C.R.S.A. § 1-13-103

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 Article 13. Election Offenses (Refs & Annos)  
 Part 1. Offenses--General Provisions

**→§ 1-13-103. Immunity of witness from prosecution**

Any person violating any of the provisions of this code is a competent witness against any other violator and may be compelled to attend and testify at any trial, hearing, proceeding, or investigation in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which his testimony was given and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

- Witnesses ↪293 1/2.
- Westlaw Topic No. 410.
- C.J.S. Witnesses § 433.

C. R. S. A. § 1-13-103, CO ST § 1-13-103

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C.R.S.A. § 1-13-104

**C**

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 General, Primary, and Congressional Vacancy Elections  
 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 1. Offenses--General Provisions

**→ § 1-13-104. Perjury**

Any person, having taken any oath or made any affirmation required by this code, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or who suborns any other person to swear or affirm as aforesaid commits perjury in the second degree as set forth in section 18-8-503, C.R.S., and shall be punished as provided in section 18-1.3-501, C.R.S.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2002, Ch. 318, § 5, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES**

**2006 Electronic Pocket Part Update**

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 5 of that Act made conforming amendments to this section.

**CROSS REFERENCES**

- Challenge to be made by written oath, see § 1-9-202.
- Self-affirmation, false statements, see § 1-1-104.
- Signature on registration sheet is proof of oath, see § 1-13-207.

**LIBRARY REFERENCES**

**2000 Main Volume**

- Elections ↻ 317, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-104, CO ST § 1-13-104

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C.R.S.A. § 1-13-105

**C**

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Title 1. Elections (Refs & Annos)

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▣ Part 1. Offenses--General Provisions

**→ § 1-13-105. False certificates by officers**

Any notary public or any officer authorized by law to administer oaths who knowingly makes a false certificate in regard to a matter connected with an election held under the laws of this state commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2002, Ch. 318, § 6, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES**

**2006 Electronic Pocket Part Update**

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 6 of that Act made conforming amendments to this section.

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↪ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-105, CO ST § 1-13-105

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C.R.S.A. § 1-13-106

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 1. Offenses--General Provisions

**→ § 1-13-106. Forgery**

Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges any letter of acceptance, declination, or withdrawal, or who forges the name of a registered elector to an absentee voter's ballot commits forgery as set forth in section 18-5-102, C.R.S., and shall be punished as provided in section 18-1.3-401, C.R.S.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 120, eff. July 1, 1993; Laws 1994, S.B.94-206, § 5, eff. May 31, 1994; Laws 2002, Ch. 318, § 7, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES**

**2006 Electronic Pocket Part Update**

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 7 of that Act made conforming amendments to this section.

**2000 Main Volume**

The 1993 amendment substituted "absentee" for "absent" and deleted "1973" following "C.R.S." in two places.

The 1994 amendment deleted "in the second degree" following "commits forgery", and substituted "section 18-5-102" for "section 18-5-103".

**CROSS REFERENCES**

Absentee ballots, investigation of forged affidavits, see § 1-8-304.

**LIBRARY REFERENCES**

**2000 Main Volume**

Elections ↻ 318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

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C.R.S.A. § 1-13-107

**C**

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Article 13. Election Offenses (Refs & Annos)

Part 1. Offenses--General Provisions

**→ § 1-13-107. Violation of duty**

Any public officer, election official, or other person upon whom any duty is imposed by this code who violates, neglects, or fails to perform such duty or is guilty of corrupt conduct in the discharge of the same or any notary public or other officer authorized by law to administer oaths who administers any oath knowing it to be false or who knowingly makes a false certificate in regard to a matter connected with any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13- 111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

**LIBRARY REFERENCES**

2000 Main Volume

- Elections ↪ 314, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-107, CO ST § 1-13-107

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C.R.S.A. § 1-13-109

**C**

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 1. Offenses--General Provisions

**→§ 1-13-109. False statements relating to candidates or questions submitted to electors—penalties—definitions**

(1)(a) No person shall knowingly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office.

(b) Any person who violates any provision of paragraph (a) of this subsection (1) commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(2)(a) No person shall recklessly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office. Notwithstanding any other provision of law, for purposes of this subsection (2), a person acts "recklessly" when he or she acts in conscious disregard of the truth or falsity of the statement made, published, broadcasted, or circulated.

(b) Any person who violates any provision of paragraph (a) of this subsection (2) commits a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(3) For purposes of this section, "person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons, including a group organized under section 527 of the Internal Revenue Code.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2002, Ch. 318, § 8, eff. Oct. 1, 2002; Laws 2005, Ch. 305, § 1, eff. Sept. 1, 2005.

**HISTORICAL AND STATUTORY NOTES**

**2006 Electronic Pocket Part Update**

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 8 of that Act made conforming amendments to this section.

Laws 2005, Ch. 305, § 1, rewrote this section, which previously read:

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C.R.S.A. § 1-13-110

**C**

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs &amp; Annos)

General, Primary, and Congressional Vacancy Elections

<sup>¶</sup> Article 13. Election Offenses (Refs & Annos)        <sup>¶</sup> Part 1. Offenses--General Provisions**→ § 1-13-110. Wagers with electors**

It is unlawful for any person, including any candidate for election to public office, before or during any election provided by law, to make any bet or wager with an elector, or take a share or interest in, or in any manner become a party to, any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager upon any event or contingency arising out of such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1- 13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 315, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 328, 353.

## NOTES OF DECISIONS

**Removal from office 1**

## 1. Removal from office

Laws 1891, p. 168, making it unlawful for any candidate to provide, or agree to provide, money to be used by another in making any bet on any event arising out of the election, and declaring that a violation thereof shall be a misdemeanor, does not authorize the removal by the board of trustees of a mayor who has violated it, in the absence of a prosecution and conviction of such offense in a court of competent jurisdiction. Board of Trustees of Town of Gillett v. People ex rel. Keith, App.1899, 59 P. 72, 13 Colo.App. 553. Municipal Corporations ↪ 156

C. R. S. A. § 1-13-110, CO ST § 1-13-110

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C.R.S.A. § 1-13-111

West's Colorado Revised Statutes Annotated Currentness  
 Title 1. Elections (Refs & Annos)  
 General, Primary, and Congressional Vacancy Elections  
 Article 13. Election Offenses (Refs & Annos)  
 Part 1. Offenses--General Provisions

**→ § 1-13-111. Penalties for election offenses**

In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

CROSS REFERENCES

Defacing petitions, misdemeanor violation, see § 1-13-403.

Elected officials not to handle voting machines or electronic voting equipment or devices, see § 1-5-607.

Voter registration drives, organizer violations, penalties, see § 1-2-703.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 353.

C. R. S. A. § 1-13-111, CO ST § 1-13-111

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C.R.S.A. § 1-13-112

**C**

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Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 1. Offenses--General Provisions

**→ § 1-13-112. Offenses relating to mail ballots**

Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with such a ballot shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Added by Laws 1990, S.B.90-97, § 2, eff. Jan. 1, 1991. Amended by Laws 1995, H.B.95-1241, § 81, eff. July 1, 1995.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1995 amendment substituted "shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

Former § 1-13-112 was deleted from this article as repealed and reenacted by Laws 1980, S.B.12, § 1.

**CROSS REFERENCES**

Mail Ballot Election Act, see § 1-7.5-101 et seq.

C. R. S. A. § 1-13-112, CO ST § 1-13-112

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C.R.S.A. § 1-13-113

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Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 1. Offenses--General Provisions

→ § 1-13-113. Interference with distribution of election material

During the period beginning forty-five days before and ending four days after any election, any person who prevents, hinders, or interferes with the lawful distribution of any card, pamphlet, circular, poster, handbill, yard sign, or other written material relating to any candidate for election for any office or relating to any issue that is to be submitted to the electors in any election, or any person who removes, defaces, or destroys any lawfully placed billboard, sign, or written material from any premises to which it was delivered, commits a misdemeanor and shall be punished by a fine of not more than seven hundred fifty dollars. Any person found guilty of removing, defacing, or destroying any billboard, sign, or written material shall pay the cost of replacement. The owner of the premises, an authorized agent of the owner, or any person charged with enforcement of any state law, ordinance, or regulation may remove any billboard, sign, or written material without penalty when placed without permission or authorization of the owner of such premises, or in violation of state law or county or municipal ordinance or regulation, or which is in place at any time other than during the period beginning forty-five days before and ending four days after any election.

CREDIT(S)

Added by Laws 1993, S.B.93-228, § 1, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Section 2 of Laws 1993, S.B.93-228, adding this section, provides:

"**Effective date--applicability.** This act shall take effect July 1, 1993, and shall apply to offenses committed on or after said date."

Former § 1-13-113 was deleted from this article as repealed and reenacted by Laws 1980, S.B.12, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻311.

Westlaw Topic No. 144.

C.J.S. Elections § 324.

C. R. S. A. § 1-13-113, CO ST § 1-13-113

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C.R.S.A. § 1-13-114

**C**

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 1. Offenses--General Provisions

**→ § 1-13-114. Failure to comply with requirements of secretary of state**

Any person who willfully interferes or willfully refuses to comply with the rules of the secretary of state or the secretary of state's designated agent in the carrying out of the powers and duties prescribed in section 1-1-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

CREDIT(S)

Added by Laws 1996, H.B.96-1061, § 48, eff. July 1, 1996.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

This section was derived from former § 1-1-107(3).

C. R. S. A. § 1-13-114, CO ST § 1-13-114

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C.R.S.A. § 1-13-201

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Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→ § 1-13-201. Interfering with or impeding registration**

Any person who intentionally interferes with or impedes the registration of electors, whether by act of commission or by failure to perform any act or duty imposed or required for the proper administration of parts 2 and 3 of article 2 of this title, or who knowingly permits or encourages another to do so is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. A person who collects a voter registration application from an eligible elector for mailing or delivery to the county clerk and recorder and who fails to mail or deliver the application to the proper county clerk and recorder within five business days after the application is signed is guilty of a violation of this section.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2005, Ch. 309, § 54, eff. June 6, 2005; Laws 2005, Ch. 310, § 54, eff. June 6, 2005.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2005, Ch. 309, § 54 and Laws 2005, Ch. 310, § 54, added the second sentence.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻319, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-201, CO ST § 1-13-201

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C.R.S.A. § 1-13-202

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→ § 1-13-202. Unlawful qualification as taxpaying elector**

It is unlawful to take or place title to property in the name of another or to pay the taxes or to take or issue a tax receipt in the name of another for the purpose of attempting to qualify such person as a taxpaying elector or as a qualified taxpaying elector or to aid or assist any person to do so. The ballot of any person violating this section shall be void. Any person, company, corporation, or association violating this section shall forfeit and lose all rights, franchises, or other benefits accruing or to accrue to the benefit of such person, company, corporation, or association by or as the result of any such election. Any person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻ 317, 323, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353, 355.

C. R. S. A. § 1-13-202, CO ST § 1-13-202

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C.R.S.A. § 1-13-203

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→ § 1-13-203. Procuring false registration**

It is unlawful for any person to procure his or her own name, or the name of any other person, to be registered in the registration book of a precinct in which such person is not, at the time of such registration, entitled to be registered or for any person to procure any fictitious name to be registered in the registration book of any precinct. Any person who violates any of the provisions of this section shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Each violation shall be considered a separate offense.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 82, eff. July 1, 1995.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1995 amendment, in the first sentence, inserted "or her", and in the second sentence, substituted "shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↪ 312, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 326, 353.

C. R. S. A. § 1-13-203, CO ST § 1-13-203

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C.R.S.A. § 1-13-204

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→§ 1-13-204. Adding names after registration closed**

No name shall be added to the registration book of any precinct after the close of the registration, and, if any county clerk and recorder, judge of election, or other person willfully and knowingly adds any such name of any person or any fictitious or false name to the registration book of any precinct after the close of registration, he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars. Each violation shall be considered a separate offense.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

CROSS REFERENCES

Federal postcard applications from persons in United States service, see § 1-2-208.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-204, CO ST § 1-13-204

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→§ 1-13-205. County clerk and recorder signing wrongful registration**

Every county clerk and recorder who willfully signs his name on the registration record opposite the name of any person knowing that said person is not legally entitled to be registered pursuant to the provisions of section 1-2-101 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1991, H.B.91-1137, § 79, eff. May 1, 1991.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1991 amendment substituted "registration record" for "registration sheet".

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↩312, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 326, 353.

C. R. S. A. § 1-13-205, CO ST § 1-13-205

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C.R.S.A. § 1-13-207

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→ § 1-13-207. Signature on registration record is proof of oath**

Any elector, election official, or other person, by his signature on the registration record, shall be conclusively deemed in law to have duly verified such registration record. The registration record containing such signature, or a copy thereof certified by the county clerk and recorder, shall be admissible in evidence as proof of the taking of an oath or affirmation as to the information contained therein in all criminal proceedings pursuant to sections 1-13-104, 1-13-203, and 1-13-205.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1991, H.B.91-1137, § 80, eff. May 1, 1991.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1991 amendment substituted "registration record" for "registration sheet" throughout the section.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 329.

Westlaw Topic No. 144.

C.J.S. Elections § 348 et seq.

C. R. S. A. § 1-13-207, CO ST § 1-13-207

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C.R.S.A. § 1-13-208

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→§ 1-13-208. Deputy county clerk and recorder--influencing party affiliation**

Any deputy county clerk and recorder for voter registration purposes, or employee of the department of revenue who is authorized to conduct voter registration at local driver's license examination facilities, or employee of a voter registration agency who is authorized to conduct voter registration who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1992, H.B.92-1333, § 16, eff. Jan. 1, 1993. Amended by Laws 1994, H.B.94-1294, § 34, eff. Jan. 1, 1995.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1994 amendment substituted "employee of a voter registration agency who is authorized to conduct voter registration" for "person authorized to conduct voter registration at branch registration sites".

C. R. S. A. § 1-13-208, CO ST § 1-13-208

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C.R.S.A. § 1-13-209

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 2. Offenses--Qualifications and Registration of Electors (Refs & Annos)

**→ § 1-13-209. High school deputy registrar--influencing party affiliation**

Any high school deputy registrar for voter registration purposes who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1992, H.B.92-1317, § 2, eff. July 1, 1992. Amended by Laws 1993, H.B.93-1255, § 121, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment substituted "registrar" for "county clerk and recorder".

C. R. S. A. § 1-13-209, CO ST § 1-13-209

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C.R.S.A. § 1-13-301

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 3. Offenses--Political Party Organization (Refs & Annos)

**→§ 1-13-301. Fraud at precinct caucus, assembly, or convention**

Any person in authority at any precinct caucus, assembly, or convention who in any manner dishonestly, corruptly, or fraudulently performs any act devolving on him by virtue of the position of trust which he fills or knowingly aids or abets any other person to do any fraudulent, dishonest, or corrupt act or thing in reference to the carrying on of any precinct caucus, assembly, or convention or the ascertaining or promulgating of its true will is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13- 111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-301, CO ST § 1-13-301

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C.R.S.A. § 1-13-302

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 3. Offenses--Political Party Organization (Refs & Annos)

**→§ 1-13-302. Fraudulent voting in precinct caucus, assembly, or convention**

Any person who fraudulently participates and votes in a precinct caucus, assembly, or convention when he is not a member of the political party holding such precinct caucus, assembly, or convention, as shown on the registration books of the county clerk and recorder, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↔318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

C. R. S. A. § 1-13-302, CO ST § 1-13-302

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C.R.S.A. § 1-13-303

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 3. Offenses--Political Party Organization (Refs & Annos)

**→ § 1-13-303. Offenses at precinct caucus, assembly, or convention**

(1) It is unlawful for any person at any precinct caucus, assembly, or convention:

- (a) To fraudulently vote more than once; or
- (b) To knowingly hand in two or more ballots deceitfully folded together; or
- (c) To knowingly procure, aid, counsel, or advise another to vote or attempt to vote fraudulently or corruptly; or
- (d) To falsely personate any elector and vote under his name or under an assumed name; or
- (e) To fraudulently procure, aid, abet, or encourage, directly or indirectly, any person to attempt to falsely personate any elector or to vote under an assumed name; or
- (f) To influence any voter in the casting of his vote by bribery, duress, or any other corrupt or fraudulent means; or
- (g) To receive any money or valuable thing, or the promise of either, for casting his vote for or against any person or measure or to offer his vote for or against any person or measure in consideration of money or other valuable thing, or the promise of either.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻316, 318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 332, 353.

C. R. S. A. § 1-13-303, CO ST § 1-13-303

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C.R.S.A. § 1-13-401

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 Title 1. Elections (Refs & Annos)  
 General, Primary, and Congressional Vacancy Elections  
 ◻ Article 13. Election Offenses (Refs & Annos)  
 ◻ Part 4. Offenses--Access to Ballot by Candidate (Refs & Annos)

**→ § 1-13-401. Bribery of petition signers**

Any person who offers or, with knowledge of the same, permits any person to offer for his benefit any bribe or promise of gain to an elector to induce him to sign any petition or other election paper or any person who accepts any bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after signing, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 316, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 332, 353.

C. R. S. A. § 1-13-401, CO ST § 1-13-401

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C.R.S.A. § 1-13-402

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs &amp; Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs &amp; Annos)

▣ Part 4. Offenses--Access to Ballot by Candidate (Refs &amp; Annos)

**→ § 1-13-402. Tampering with nomination papers--nomination petitions**

(1) Any person who, being in possession of any petition, certificate of nomination, or letter of acceptance, declination, or withdrawal, wrongfully or willfully destroys, defaces, mutilates, suppresses, neglects to file, or fails to cause to be filed the same within the prescribed time or who files any such paper knowing the same, or any part thereof, to be falsely made or who adds, amends, alters, or in any way changes the information on the petition as written by a signing elector is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any person who willfully destroys, defaces, mutilates, or suppresses any nomination petition or who willfully neglects to file or delays the delivery of the nomination petition or who conceals or removes any petition from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1988, H.B.1358, § 5; Laws 1989, S.B.129, § 26, eff. May 9, 1989.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-402, CO ST § 1-13-402

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C.R.S.A. § 1-13-403

**C**

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 4. Offenses--Access to Ballot by Candidate (Refs & Annos)

**→ § 1-13-403. Defacing of petitions other than nominating petitions**

Any person who willfully destroys, defaces, mutilates, or suppresses a petition; who willfully neglects to file or delays delivery of a petition; who conceals or removes a petition from the possession of the person authorized by law to have custody of it; or who aids, counsels, procures, or assists any person in doing any of the above acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1995, H.B.95-1241, § 84, eff. July 1, 1995. Amended by Laws 1996, H.B.96-1061, § 49, eff. July 1, 1996.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1996 amendment substituted "suppresses a petition; who willfully neglects to file or delays delivery of a petition; who conceals or removes a petition from" for "suppresses a petition for nomination or for recall; who willfully neglects to file or willfully delays the petition or petition section; who conceals or removes a petition or petition section from".

C. R. S. A. § 1-13-403, CO ST § 1-13-403

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C.R.S.A. § 1-13-601

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 Title 1. Elections (Refs & Annos)  
 General, Primary, and Congressional Vacancy Elections  
 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 6. Offenses--Notice and Preparation for Elections (Refs & Annos)

**→§ 1-13-601. Tampering with notices or supplies**

Any person who, prior to an election, willfully defaces, removes, or destroys any notice of election posted in accordance with the provisions of this code, or who, during an election, willfully defaces, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of electors, or who, during an election, willfully defaces, removes, or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↔317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-601, CO ST § 1-13-601

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C.R.S.A. § 1-13-701

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 Title 1. Elections (Refs & Annos)  
 General, Primary, and Congressional Vacancy Elections  
 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-701. Interference with election official**

Any person who, at any election provided by law, interferes in any manner with any election official in the discharge of his duty or who induces any election official to violate or refuse to comply with his duty or any law regulating the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↩ 319, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-701, CO ST § 1-13-701

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C.R.S.A. § 1-13-702

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-702. Interfering with watcher**

Any person who intentionally interferes with any watcher while he is discharging his duties set forth in section 1-7-108(3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2003, Ch. 315, § 1, eff. May 22, 2003.

**HISTORICAL AND STATUTORY NOTES**

2006 Electronic Pocket Part Update

Laws 2003, Ch. 315, § 1 substituted "1-7-108(3)" for "1-7-202(3)".

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↻319, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-702, CO ST § 1-13-702

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C.R.S.A. § 1-13-703

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Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-703. Tampering with registration book, registration list, or pollbook**

Any person who mutilates or erases any name, figure, or word in any registration book, registration list, or pollbook; or who removes such registration book, registration list, or pollbook or any part thereof from the place where it has been deposited with an intention to destroy the same, or to procure or prevent the election of any person, or to prevent any voter from voting; or who destroys any registration book, registration list, or pollbook or part thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-703, CO ST § 1-13-703

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C.R.S.A. § 1-13-704

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-704. Unlawfully refusing ballot or permitting to vote**

If at any election provided by law any judge of election willfully and maliciously refuses or neglects to receive the ballot of any registered elector who has taken or offered to take the oath prescribed by section 1-9-204 or knowingly and willfully permits any person to vote who is not entitled to vote at such election, such judge is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪314, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-704, CO ST § 1-13-704

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C.R.S.A. § 1-13-704.5

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General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-704.5. Voting by persons not entitled to vote--penalty**

(1) Any person voting in any election provided by law knowing that he or she is not entitled to vote in such election commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

CREDIT(S)

Added by Laws 2006, 1 Ex. Sess., Ch. 6, § 1, eff. July 31, 2006.

**HISTORICAL AND STATUTORY NOTES**

**2006 Electronic Pocket Part Update**

Laws 2006, 1st Ex.Sess., Ch. 6, § 4, provides:

"Applicability. This act shall apply to offenses committed on or after the effective date of this act."

C. R. S. A. § 1-13-704.5, CO ST § 1-13-704.5

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C.R.S.A. § 1-13-705

**C**

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Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-705. Personating elector**

Any person who falsely personates any elector and votes at any election provided by law under the name of such elector shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 85, eff. July 1, 1995.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment substituted "shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

LIBRARY REFERENCES

2000 Main Volume

Elections ↪318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

C. R. S. A. § 1-13-705, CO ST § 1-13-705

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 Article 13. Election Offenses (Refs & Annos)  
 Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-706. Delivering and receiving ballots at polls**

- (1) No voter shall receive an official ballot from any person except one of the judges of election having charge of the ballots, nor shall any person other than such judge deliver an official ballot to such voter.
- (2) No person except a judge of election shall receive from any voter a ballot prepared for voting.
- (3) Any voter who does not vote the ballot received by him shall return his ballot to the judge from whom he received the same before leaving the polling place.
- (4) Each violation of the provisions of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

- Elections ↪ 317, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-706, CO ST § 1-13-706

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C.R.S.A. § 1-13-707

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 Title 1. Elections (Refs & Annos)  
 General, Primary, and Congressional Vacancy Elections  
 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-707. Inducing defective ballot**

Any person who causes any deceit to be practiced with intent to fraudulently induce a voter to deposit a defective ballot so as to have the ballot thrown out and not counted is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻318, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 331, 353.

C. R. S. A. § 1-13-707, CO ST § 1-13-707

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C.R.S.A. § 1-13-708

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 General, Primary, and Congressional Vacancy Elections  
 Article 13. Election Offenses (Refs & Annos)  
 Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-708. Tampering with voting equipment**

Any person who tampers with any electronic or electromechanical voting equipment before, during, or after any election provided by law with intent to change the tabulation of votes thereon to reflect other than an accurate accounting is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2004, Ch. 334, § 28, eff. May 28, 2004.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2004, Ch. 334, § 28, substituted "any electronic or electromechanical" for "a voting machine or any electronic".

LIBRARY REFERENCES

2000 Main Volume

- Elections ↪317, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-708, CO ST § 1-13-708

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C.R.S.A. § 1-13-708.5

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▣ Article 13. Election Offenses (Refs & Annos)  
▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-708.5. Elected officials not to handle electronic or electromechanical voting equipment or devices**

Any person who violates any provision of section 1-5-607 is guilty of a misdemeanor and shall be punished as provided in section 1-13-111.

CREDIT(S)

Added by Laws 1996, H.B.96-1061, § 50, eff. July 1, 1996.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

This section is reprinted to conform to the state edition.

2000 Main Volume

This section was derived from former § 1-5-607(4).

C. R. S. A. § 1-13-708.5, CO ST § 1-13-708.5

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C.R.S.A. § 1-13-709

**C**

West's Colorado Revised Statutes Annotated Currentness

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▣ Article 13. Election Offenses (Refs &amp; Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→ § 1-13-709. Voting in wrong precinct**

Any person who, at any election provided by law, knowingly votes or offers to vote in any election precinct in which he or she is not qualified to vote shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 86, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment inserted "or she", deleted "is guilty of a misdemeanor and, upon conviction thereof," following "qualified to vote", substituted "five thousand" for "two hundred" and "eighteen" for "three", and added ", or by both such fine and imprisonment".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 313, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 325, 353.

## RESEARCH REFERENCES

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5 ALR 6th 1, Validity, Construction, and Application of State Statutory Voting Offenses.

## NOTES OF DECISIONS

Law governing 2  
Limitation of actions 3  
Validity 1

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C.R.S.A. § 1-13-709.5

**C**

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▣ Article 13. Election Offenses (Refs &amp; Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→ § 1-13-709.5. Residence--false information--penalty**

Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

CREDIT(S)

Added by Laws 1996, H.B.96-1061, § 51, eff. July 1, 1996. Amended by Laws 2002, Ch. 318, § 9, eff. Oct. 1, 2002.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2002, Ch. 318, § 2, amended and relocated Article 1.3 of Title 18, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18. Section 9 of that Act made conforming amendments to this section.

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪312.

Westlaw Topic No. 144.

C.J.S. Elections § 326.

C. R. S. A. § 1-13-709.5, CO ST § 1-13-709.5

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C.R.S.A. § 1-13-710

**C**

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▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→§ 1-13-710. Voting twice--penalty**

Any voter who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1995, H.B.95-1241, § 87, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1995 amendment substituted "Any voter who" for "If any voter" and "shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "he is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↪313, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 325, 353.

C. R. S. A. § 1-13-710, CO ST § 1-13-710

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C.R.S.A. § 1-13-711

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→ § 1-13-711. Interference with voter while voting

Any person who interferes with any voter who is inside the immediate voting area or is marking a ballot or operating a voting device or electronic voting device at any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 2004, Ch. 334, § 29, eff. May 28, 2004.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

Laws 2004, Ch. 334, § 29, substituted "device or electronic voting device" for "machine".

LIBRARY REFERENCES

2000 Main Volume

- Elections ↪ 319, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 330, 353.

C. R. S. A. § 1-13-711, CO ST § 1-13-711

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C.R.S.A. § 1-13-712

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 ☒ Article 13. Election Offenses (Refs & Annos)  
 ☒ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-712. Disclosing or identifying vote**

- (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.
- (2) No person shall endeavor to induce any voter to show how he marked his ballot.
- (3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.
- (4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪317, 332.  
 Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-712, CO ST § 1-13-712

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C.R.S.A. § 1-13-713

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-713. Intimidation**

It is unlawful for any person directly or indirectly, by himself or by any other person in his behalf, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any elector or to compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election provided by law or to give or refrain from giving his vote for any particular person or measure at any such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻319, 320, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 330, 333, 353.

UNITED STATES SUPREME COURT

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials near polling place, see *Burson v. Freeman*, 1992, 112 S.Ct. 1846, 504 U.S. 191, 119 L.Ed.2d 5.

C. R. S. A. § 1-13-713, CO ST § 1-13-713

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C.R.S.A. § 1-13-714

**C**

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Title 1. Elections (Refs &amp; Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs &amp; Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs &amp; Annos)

**→§ 1-13-714. Electioneering--removing and return of ballot**

No person shall do any electioneering on the day of any election within any polling place or in any public street or room or in any public manner within one hundred feet of any building in which a polling place is located, as publicly posted by the designated election official. As used in this section, the term "electioneering" includes campaigning for or against any candidate who is on the ballot or any ballot issue or ballot question that is on the ballot. "Electioneering" also includes soliciting signatures for a candidate petition, a recall petition, or a petition to place a ballot issue or ballot question on a subsequent ballot. "Electioneering" shall not include a respectful display of the American flag. No person shall remove any official ballot from the polling place before the closing of the polls. Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

## CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1994, H.B.94-1286, § 72, eff. July 1, 1994; Laws 1995, H.B.95-1241, § 88, eff. July 1, 1995; Laws 2006, Ch. 356, § 23, eff. June 6, 2006.

## HISTORICAL AND STATUTORY NOTES

## 2006 Electronic Pocket Part Update

Laws 2006, Ch. 356, § 23, inserted "'Electioneering' shall not include a respectful display of the American flag".

## 2000 Main Volume

The 1994 amendment, in the first sentence, substituted "designated election official" for "county clerk and recorder"; and inserted the second and third sentences.

The 1995 amendment, in the first sentence, inserted "building in which a" and "is located", and in the second sentence, substituted "that" for "which".

## CROSS REFERENCES

Polling places, multi-use buildings, see § 1-5-105.

Posting of signs at polling places, see § 1-5-504.5.

## LIBRARY REFERENCES

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C.R.S.A. § 1-13-715

**C**

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-715. Liquor in or near polling place**

(1) It is unlawful for any election official or other person to introduce into any polling place, or to use therein, or to offer to another for use therein, at any time while any election is in progress or the result thereof is being ascertained by the counting of the ballots, any intoxicating malt, spirituous, or vinous liquors.

(2) It is unlawful for any officer or board of officers of any county or any municipality, whether incorporated under general law or by special charter, who may at any time be by law charged with the duty of designating polling places for the holding of any general or congressional election therein, to select therefor a room wherein any intoxicating malt, spirituous, or vinous liquors are usually sold for consumption on the premises.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1983, S.B.187, § 31; Laws 1996, H.B.96-1061, § 52, eff. July 1, 1996.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1996 amendment, in subsec. (2), deleted "or a room within the distance of fifty feet, measured in a direct line, of any place where any such liquors are usually sold for consumption on the premises" from the end.

**CROSS REFERENCES**

Qualifications for election judges, see § 1-6-101.

**LIBRARY REFERENCES**

2000 Main Volume

Elections ↻317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-715, CO ST § 1-13-715

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C.R.S.A. § 1-13-716

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-716. Destroying, removing, or delaying delivery of election records**

(1) No person shall willfully destroy, deface, or alter any ballot or any election records or willfully delay the delivery of any such ballots or election records, or take, carry away, conceal, or remove any ballot, ballot box, or election records from the polling place or from the possession of a person authorized by law to have the custody thereof, or aid, counsel, procure, advise, or assist any person to do any of the aforesaid acts.

(2) No election official who has undertaken to deliver the official ballots and election records to the county clerk and recorder shall neglect or refuse to do so within the time prescribed by law or shall fail to account fully for all official ballots and other records in his charge. Informality in the delivery of the ballots and election records shall not invalidate the vote of any precinct if such records are delivered prior to the canvassing of the votes by the county board of canvassers.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪314, 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 329, 353.

C. R. S. A. § 1-13-716, CO ST § 1-13-716

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 ▣ Article 13. Election Offenses (Refs & Annos)  
 ▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-717. Penalty for destruction of supplies**

Any person who, during an election, willfully defaces, tears down, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of voters or who, during an election, willfully removes or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot or willfully hinders the voting of others is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪ 317, 332.  
 Westlaw Topic No. 144.  
 C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-717, CO ST § 1-13-717

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C.R.S.A. § 1-13-718

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Title 1. Elections (Refs & Annos)

General, Primary, and Congressional Vacancy Elections

▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-718. Release of information concerning count**

Any election official, watcher, or other person who releases information concerning the count of ballots cast at precinct polling places or of absentee voters' ballots prior to 7 p.m. on the day of the election is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

**CREDIT(S)**

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 122, eff. July 1, 1993.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

The 1993 amendment substituted "absentee" for "absent".

**LIBRARY REFERENCES**

2000 Main Volume

Elections ⇄ 314, 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 329, 353.

**NOTES OF DECISIONS**

**Recount 1**

**1. Recount**

Fraud and gross negligence and disregard of duties in election held such as could not be purged by recount (C.L. §§ 7691, 7692, 7744, 7745). *People v. Lindsey*, 1927, 253 P. 465, 80 Colo. 465, certiorari denied 47 S.Ct. 767, 274 U.S. 757, 71 L.Ed. 1336. Elections ⇄ 232

C. R. S. A. § 1-13-718, CO ST § 1-13-718

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C.R.S.A. § 1-13-719

**C**

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Title 1. Elections (Refs & Annos)

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-719. Employer's unlawful acts**

(1) It is unlawful for any employer, whether corporation, association, company, firm, or person, or any officer or agent of such employer:

(a) In any manner to control the action of his employees in casting their votes for or against any person or measure at any precinct caucus, assembly, or convention; or

(b) To refuse to an employee the privilege of taking time off to vote as provided by section 1-7-102, or to subject an employee to a penalty or reduction of wages because of the exercise of such privilege, or to violate any of the provisions of section 1-7-102 in any other way; or

(c) In paying his employees the salary or wages due them, to enclose their pay in pay envelopes upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions, views, or actions of such employees; or

(d) Within ninety days of any election provided by law, to put up or otherwise exhibit in his factory, workshop, mine, mill, boardinghouse, office, or other establishment or place where his employees may be working or be present in the course of such employment any handbill, notice, or placard containing any threat, notice, or information that, if any particular ticket or candidate is elected, work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced or containing other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111. In addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this state.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↻317, 319, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 330, 353.

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C.R.S.A. § 1-13-720

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-720. Unlawfully giving or promising money or employment**

(1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or other valuable consideration to or for any elector, or to or for any other person, to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or to induce such elector to go to the polls or remain away from the polls at such election or on account of such elector having voted or refrained from voting for any particular person or issue or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money wholly or partially expended in bribery at any such election; or

(c) To give, offer, or promise any office, place, or employment or to promise, procure, or endeavor to procure any office, place, or employment to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or issue.

(2) Each offense set forth in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪316, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 332, 353.

UNITED STATES SUPREME COURT

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials

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C.R.S.A. § 1-13-721

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 General, Primary, and Congressional Vacancy Elections  
 ¶ Article 13. Election Offenses (Refs & Annos)  
 ¶ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→ § 1-13-721. Receipt of money or jobs**

(1) It is a misdemeanor for any person, directly or indirectly, by himself or through any other person:

(a) Before or during an election provided by law, to receive, agree to accept, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;

(b) During or after an election provided by law, to receive any money or other valuable thing on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1982, H.B.1031, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ↪216.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 204 et seq.

UNITED STATES SUPREME COURT

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials near polling place, see *Burson v. Freeman*, 1992, 112 S.Ct. 1846, 504 U.S. 191, 119 L.Ed.2d 5.

C. R. S. A. § 1-13-721, CO ST § 1-13-721

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C.R.S.A. § 1-13-722

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 ¶ Article 13. Election Offenses (Refs & Annos)  
 ¶ Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-722. Defacing or removing abstract of votes**

Any person who defaces, mutilates, alters, or removes the abstract of votes cast posted upon the outside of the polling place in accordance with section 1-7-602 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1999, Ch. 154, § 23, eff. July 1, 1999; Laws 1999, Ch. 186, § 1, eff. Aug. 4, 1999.

**HISTORICAL AND STATUTORY NOTES**

2000 Main Volume

Laws 1999, Ch. 154, § 23, inserted "cast".

Laws 1999, Ch. 186, § 1, substituted "1-7-602" for "1-7-311".

**LIBRARY REFERENCES**

2000 Main Volume

- Elections ↪317, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 329, 353.

C. R. S. A. § 1-13-722, CO ST § 1-13-722

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C.R.S.A. § 1-13-723

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    \* Article 13. Election Offenses (Refs & Annos)  
        \* Part 7. Offenses--Conduct of Elections (Refs & Annos)

**→§ 1-13-723. Penalty for neglect of duty--destruction of ballots--breaking seal**

(1) Every officer upon whom any duty is imposed by any election law who violates his duty or who neglects or omits to perform the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any official or person, except one authorized by law, who breaks or loosens a seal on a ballot or a ballot box with the intent to disclose or learn the number of such ballot or ballot box is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1.

LIBRARY REFERENCES

2000 Main Volume

Elections ⇐314, 317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 327, 329, 353.

C. R. S. A. § 1-13-723, CO ST § 1-13-723

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C.R.S.A. § 1-13-801

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▣ Article 13. Election Offenses (Refs & Annos)

▣ Part 8. Offenses--Absentee Voting and Voting by New Residents (Refs & Annos)

**→ § 1-13-801. Mailing other materials with absentee voter's ballot**

It is unlawful for any county clerk and recorder to deliver or mail to a registered elector, as a part of or in connection with the absentee voter's ballot, anything other than the voting material as provided in article 8 of this title. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 123, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment, in the first sentence, substituted "absentee" for "absent".

LIBRARY REFERENCES

2000 Main Volume

Elections ↩ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

C. R. S. A. § 1-13-801, CO ST § 1-13-801

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C.R.S.A. § 1-13-802

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▣ Article 13. Election Offenses (Refs &amp; Annos)

▣ Part 8. Offenses--Absentee Voting and Voting by New Residents (Refs &amp; Annos)

**→§ 1-13-802. Absentee voter applications and deliveries outside county clerk and recorder's office**

No county clerk and recorder shall accept any application for any absentee voter's ballot nor make personal delivery of any such ballot to the applicant unless such acceptance and delivery occurs within the confines of the official office of such county clerk and recorder, except as otherwise provided in sections 1-8-104, 1-8-106, and 1-8-112. Any acceptance or delivery contrary to the provisions of this section renders void the ballot to which it relates. Each violation of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

## CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 124, eff. July 1, 1993; Laws 1996, H.B.96-1061, § 80, eff. July 1, 1996.

## HISTORICAL AND STATUTORY NOTES

## 2000 Main Volume

The 1993 amendment, in the first sentence, substituted "absentee" for "absent".

The 1996 amendment, in the first sentence, substituted "sections 1-8-104, 1-8-106, and 1-8-112" for "sections 1-8-103, 1-8-105, and 1-8-111."

## LIBRARY REFERENCES

## 2000 Main Volume

Elections ↪316, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 332, 353.

C. R. S. A. § 1-13-802, CO ST § 1-13-802

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▣ Part 8. Offenses--Absentee Voting and Voting by New Residents (Refs &amp; Annos)

**→§ 1-13-803. Offenses relating to absentee voting**

Any election official or other person who knowingly violates any of the provisions of article 8 of this title relative to the casting of absentee voters' ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast by an absentee voter shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

CREDIT(S)

Repealed and reenacted by Laws 1980, S.B.1, § 1. Amended by Laws 1993, H.B.93-1255, § 125, eff. July 1, 1993; Laws 1995, H.B.95-1241, § 89, eff. July 1, 1995.

## HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1993 amendment substituted "absentee" for "absent" in two places.

The 1995 amendment substituted "shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment" for "is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111".

## LIBRARY REFERENCES

2000 Main Volume

Elections ↻314, 317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 329, 353.

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A.C.A. § 7-1-103

**C**

West's Arkansas Code Annotated Currentness

Title 7. Elections

Chapter 1. General Provisions (Refs & Annos)

**→§ 7-1-103. Misdemeanors**

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

(1) It shall be unlawful for any person to appoint or offer to appoint anyone to any office or position of trust or for any person to influence, attempt to influence, or offer to influence the appointment, nomination, or election of any person to office in consideration of the support or assistance of the person for any candidate in any election in this state;

(2)(A) It shall be unlawful for any public servant, as defined in § 21-8-402, to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office; and

(B) It shall be unlawful for any public servant, as defined in § 21-8-402, to circulate an initiative or referendum petition or to solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas;

(3) It shall be unlawful for any public servant, as defined in § 21-8-402, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds;

(4) It shall be unlawful for any person to assess any public employee, as defined in § 21-8-402, for any political purpose whatever or to coerce by threats or otherwise any public employee into making a subscription or contribution for any political purpose;

(5) It shall be unlawful for any person employed in any capacity in any department of the State of Arkansas to have membership in any political party or organization which advocates the overthrow of our constitutional form of government;

(6) It shall be unlawful for any campaign banners, campaign signs, or other campaign literature to be placed on any cars, trucks, tractors, or other vehicles belonging to the State of Arkansas or any municipality or county in the state;

(7)(A) All articles, statements, or communications appearing in any newspaper printed or circulated in this state or on radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement" or "Paid Political Ad".

(B) Both the persons placing and the persons publishing the articles, statements, or communications shall be

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A.C.A. § 7-1-103

responsible for including the required disclaimer;

(8) Repealed by Acts of 1999, Act 1525, § 1, eff. July 30, 1999.

(9)(A) No election official acting in his official capacity shall do any electioneering on any election day or any day on which early voting is allowed. Except as provided in subdivisions (B) and (C) of this subdivision (a)(9), no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place on election day.

(B) During early voting days, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever during early voting hours in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the early voting site nor engage in those activities with persons standing in line to vote whether within or without the courthouse.

(C) When the early voting occurs at a facility other than the county clerk's office, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place;

(10) No election official shall perform any of the duties of the position before taking and subscribing to the oath provided for in § 7-4-110;

(11) No person applying for a ballot shall swear falsely to any oath administered by the election officials with reference to his or her qualifications to vote;

(12) No person shall willfully cause or attempt to cause his own name to be registered in any other election precinct than that in which he is or will be before the next ensuing election qualified as an elector;

(13) During any election, no person shall remove, tear down, or destroy any booths or supplies or other conveniences placed in any booth or polling site for the purpose of enabling the voter to prepare his ballot;

(14) No person shall take or carry any ballot obtained from any election official outside of the polling room or have in his possession outside of the polling room before the closing of the polls any ballot provided by any county election commissioners;

(15) No person shall furnish a ballot to any elector who cannot read informing him that it contains a name or names different from those which are written or printed thereon or shall change or mark the ballot of any elector who cannot read so as to prevent the elector from voting for any candidate, act, section, or constitutional amendment as the elector intended;

(16) No election official or other person shall unfold a ballot or without the express consent of the voter ascertain or attempt to ascertain any vote on a ballot before it is placed in the ballot box;

(17) No person shall print or cause to be printed any ballot for any election held under this act with the names of

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A.C.A. § 7-1-103

the candidates appearing thereon in any other or different order or manner than provided by this act;

(18) No election official shall permit the vote of any person to be cast in any election precinct in this state in any election legally held in this state when the person does not appear in person at the election precinct and actually cast the vote. This subdivision shall not apply to persons entitled to cast absentee ballots;

(19)(A) No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

(B) No person shall cast a ballot or vote in the preferential primary of one (1) political party and then cast a ballot or vote in the general primary of another political party in this state;

(20) No person shall:

(A) Vote, knowing himself not to be entitled to vote;

(B) Vote more than once at any election, or knowingly cast more than one (1) ballot, or attempt to do so;

(C) Alter or attempt to alter any ballot after it has been cast;

(D) Add or attempt to add any ballot to those legally polled at any election either by fraudulently introducing it into the ballot box before or after the ballots have been counted or at any other time or in any other manner with the intent or effect of affecting the count or recount of the ballots;

(E) Withdraw or attempt to withdraw any ballot lawfully polled with the intent or effect of affecting the count or recount of the ballots; or

(F) In any manner interfere with the officials lawfully conducting the election or the canvass or with the voters lawfully exercising their right to vote at the election;

(21) No person shall make any bet or wager upon the result of any election in this state;

(22) No election official, poll watcher, or any other person in or out of this state in any primary, general, or special election in this state shall divulge to any person the results of any votes cast for any candidate or on any issue in the election until after the closing of the polls on the day of the election. The provisions of this subdivision (22) shall not apply to any township or precinct in this state in which all of the registered voters therein have voted prior to the closing of the polls in those instances where there are fifteen (15) or fewer registered voters in the precinct or township; and

(23) Any person, election official, county clerk, or deputy clerk who violates any provisions of the absentee voting laws, § 7-5-401 et seq., shall be punished as provided in this section.

(b)(1) Except as otherwise provided, the violation of any provision of this section shall be a Class A misdemeanor.

(2)(A) Any person convicted under the provisions of this section shall thereafter be ineligible to hold any office or employment in any of the departments in this state.

(B)(i) If any person is convicted under the provisions of this section while employed by any of the departments of this state, he shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction

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shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

(c) Any violation of this act not covered by this section and § 7-1-104 shall be considered a Class A misdemeanor and shall be punishable as such.

Acts of 1969, Act 465, Art. 11, § 4; Acts of 1970 (Ex. Sess.), Act 3, § 1; Acts of 1971, Act 261, § 24; Acts of 1981, Act 327, § 1; Acts of 1987, Act 395, § 1; Acts of 1989, Act 505, § 2; Acts of 1991, Act 241, § 2; Acts of 1991, Act 786, § 4; Acts of 1995, Act 497, § 1; Acts of 1995, Act 1085, § 1; Acts of 1997, Act 445, § 2; Acts of 1997, Act 1121, § 1; Acts of 1999, Act 553, § 1, eff. July 30, 1999; Acts of 1999, Act 1525, § 1, eff. July 30, 1999; Acts of 2001, Act 795, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 926, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 1839, § 1, eff. April 20, 2001; Acts of 2005, Act 1284, § 1, eff. Aug. 12, 2005.

Formerly A.S.A. 1947, § 3-1104.

#### CROSS REFERENCES

Arkansas ethics commission, see § 7-6-217.

Campaign practices pledge, falsification, see § 7-6-102.

Citizen complaints filed with Arkansas Ethics Commission, see § 7-6-218.

Classification of offenses, determinate sentencing, misdemeanors and felonies, see § 5-4-401.

Election and voter registration law violations, see § 7-4-118.

Fines, restitution and imprisonment, punishment for misdemeanors and felonies generally, see § 5-4-104.

State Board of Election Commissioners; members; officers; meetings, see § 7-4-101.

#### LIBRARY REFERENCES

Elections ↻332.

Westlaw Key Number Search: 144k332.

C.J.S. Elections § 353.

#### NOTES OF DECISIONS

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## A.C.A. § 7-1-103

## 1. Electioneering

Evidence in proceeding alleging abridgment of right to vote established that county election officials did not prohibit voters from carrying voting aids into polling place but only that officials complied with Arkansas statute prohibiting handing out or distributing of campaign literature within 100 feet of polling place on election day. A.C.A. § 7-1-103(9). *McGruder v. Phillips County Election Com'n*, 1988, 850 F.2d 406. Counties ⇨ 38

## 2. Waiver of secrecy

Where it was impossible in primary election contest to identify ballot of voter, whose vote was challenged on ground that he had voted in wrong precinct, because his ballot stub could not be found, court properly permitted voter to waive secrecy of his ballot and state what candidate he voted for. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇨ 154(10)

## 3. Domicile

Intention of a person as to where he resides is a question of fact. *Phillips v. Melton*, 1953, 222 Ark. 162, 257 S.W.2d 931. Domicile ⇨ 11

Where contestee in primary election contest questioned votes of two voters, who were husband and wife, and proved that they had been living in another state for nine years before election, trial court properly refused to allow contestant to show that voters had subjective intent to maintain residence in county of election, since proffered proof would not have established voters' right to vote in that county. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇨ 154(10)

In election contest involving office of school director, evidence was sufficient to support finding that certain voters had not abandoned domicile in school district, even though they were living in another city. Ark.Stats. §§ 80-311, 80-318, 80-321. *Phillips v. Melton*, 1953, 222 Ark. 162, 257 S.W.2d 931. Elections ⇨ 295(1)

## 4. Betting on elections

Exceptionally strong case is made in primary election contest when losing candidate proves that election judge bet on outcome in violation of statutes. Ark.Stats. §§ 3-704, 3-801 et seq., 3-1516. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇨ 154(10)

Betting on results of elections, including primary elections, is illegal and void, Crawford & Moses' Dig. § 3890. *Williams v. Kagy*, 1928, 176 Ark. 484, 3 S.W.2d 332. Gaming ⇨ 5

Wagers upon elections, then pending, are calculated to endanger the peace and harmony of society, and have a corrupting influence on the public morals, and have uniformly been considered as contrary to sound policy. *Jeffrey v. Ficklin*, 1841, 3 Ark. 227, 36 Am.Dec. 456, Unreported. Elections ⇨ 315

## 5. Availability of ballots

When ballots are not available in primary election contest, electors may be called to testify for whom they voted. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇨ 154(10)

## 6. Intimidation of voter

A.C.A. § 7-1-103

Where voter on entering polling place told election judge that she was going to vote for one candidate and election judge told her that her husband had voted for another candidate and that her candidate would "tear up our school" and, as a result, voter cast her ballot for candidate recommended by election judge, discarding her vote was proper. Ark.Stats. § 3-1415. *Phillips v. Melton*, 1953, 222 Ark. 162, 257 S.W.2d 931. Elections ⇄ 227(9)

#### 7. Unlawful voting

Contention that voter improperly cast absentee ballot because he allegedly was not unavoidably absent from his precinct on election day was presented too late, where raised for first time on appeal and long after time for filing complaint in primary election contest. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇄ 154(6)

#### 8. Unofficial ballots

Complete lists of all primary election candidates for each state, district and county office, distributed at political meeting by defendant telling audience for whom to vote in each case, were unofficial "ballots" within statute prohibiting distribution of "ballots" outside of ballots ordered for use in election for purpose of instructing voters how to vote, notwithstanding that official ballots were printed and that lists were mimeographed, and that lists did not have official designation as ballot to be used in Democratic Primary appearing on official ballots, and that one office on list appeared at different place than on official ballot. *Pope's Dig. § 4873. Branton v. State*, 1949, 214 Ark. 861, 218 S.W.2d 690, certiorari denied 70 S.Ct. 155, 338 U.S. 878, 94 L.Ed. 538. Elections ⇄ 320

#### 9. Offenses by officers

Granting of recount in primary election contest does not violate rule that voters are not to be disfranchised by misconduct of election official. *Wood v. Brown*, 1962, 235 Ark. 258, 235 Ark. 500, 361 S.W.2d 67. Elections ⇄ 154(2)

Kirby's Dig. § 2825 creates two separate offenses, one for making a false count of the ballots and one for falsely certifying the election returns. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⇄ 314

Falsifying election returns and making a false count of votes held separate offenses under Acts 1909, p. 507, § 4, making it a felony to falsify returns or make a false count of ballots. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⇄ 314

Under Acts 1909, c. 165, section 4, providing that any judge or clerk who shall falsify the "returns" of a primary election shall be deemed guilty of a felony, etc., the returns consist of the poll books in which is entered the certificate of the officer conducting the election, together with a list of voters and one or more of the tally sheets, which are required to be carefully enveloped, sealed and delivered to the officer or board designated by the statute. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⇄ 314

Under the primary election law, Acts 1909, c. 165, section 4, the offenses of falsifying the returns of a primary election and of knowingly making a false count of the ballots cast are separate and distinct. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⇄ 314

Kirby's Digest, § 1667, imposing a penalty upon any judge or clerk of any election who "shall neglect, improperly delay or refuse to perform any of the duties required by law," etc., is inapplicable to school elections not conducted under the general election law, as provided by Kirby's Digest, § 7591. *Brown v. Haselman*, 1906, 79 Ark. 213, 95 S.W. 136. Elections ⇄ 323

In a declaration against a judge of elections for the statutory penalty for permitting an elector to vote twice, it is

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## A.C.A. § 7-1-103

sufficient to charge that he did so "intentionally, wrongfully, and from motives of partiality, contrary to the form," etc., without averring the name of the person for whom the elector voted. Kirkpatrick v. Stewart, 1858, 19 Ark. 695, Unreported. Elections ⤵ 323

In a declaration for a penalty, under Eng.Dig. c. 61, § 28, it is sufficient to charge that the defendant took out the ballots and counted them before the polls were closed and the poll books signed, "intentionally, knowingly, and contrary to the form," etc., without averring that he acted corruptly and maliciously. Kirkpatrick v. Stewart, 1858, 19 Ark. 695, Unreported. Elections ⤵ 323

A declaration in an action of debt against a judge of elections, under Eng.Dig. c. 61, § 28, to recover the penalty prescribed for neglect of duty and misbehavior in office in appointing a minor clerk, is sufficient if it charges that he did so "knowingly, willfully, wrongfully, and contrary to the form," etc., without charging that he did so corruptly and maliciously. Kirkpatrick v. Stewart, 1858, 19 Ark. 695, Unreported. Elections ⤵ 323

## 10. Transportation of ballots

Statute in effect at time of election did not criminalize allegedly improper transportation of ballots by sheriff who was candidate for reelection in contested race, but rather merely noted that sheriff running for reelection in contested election would be "disqualified" from carrying out duties to deliver election supplies; statute did not specifically prohibit any act on part of sheriff. A.C.A. § 7-5-211(a) (1996). State ex rel. Sargent v. Lewis, 1998, 979 S.W.2d 894, 335 Ark. 188. Elections ⤵ 314

Allegations that sheriff violated election laws by delivering ballots to precinct himself when he was candidate for re-election did not create forfeiture of office, by law, so as to support usurpation action, absent any actual conviction of election law violations. A.C.A. §§ 7-1-103(28, 29), 7-1-104, 7-5-211, 16-118-105. Sargent v. Foster, 1998, 966 S.W.2d 263, 332 Ark. 608. Sheriffs And Constables ⤵ 6

## 11. Sufficiency of evidence

In prosecution for introducing fraudulent ballots in primary election with intent to affect count or recount of ballots, evidence on questions whether defendant had clipped name of unopposed candidate for township committeeman from certain ballots, and had encouraged certain voter to mark ballot for certain candidates was insufficient for jury. Artk.Stats. § 3-1525. Williams v. State, 1953, 222 Ark. 458, 261 S.W.2d 263. Elections ⤵ 330

## A.C.A. § 7-1-103, AR ST § 7-1-103

Current through 2006 First Extraordinary Session of the 85th General Assembly, including changes made by the Arkansas code Revision Commission as a result of the 2006 First Extraordinary Session.

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A.C.A. § 7-1-104

**C**

West's Arkansas Code Annotated Currentness

Title 7. Elections

Chapter 1. General Provisions (Refs &amp; Annos)

**→ § 7-1-104. Felonies**

(a) The following offenses shall be deemed felonies punishable as provided in this section:

(1) No person shall falsely make or fraudulently destroy any certificate of nominations or any part thereof, file any certificate of nominations knowing the certificate or any part thereof to be false, suppress any nomination or any part thereof which has been filed, or forge or falsely write the name or initials of any election official on any ballot;

(2) No public official or other person shall in any manner willfully or corruptly permit any person not entitled to register for the purpose of voting to register, nor shall a public official or other person forge or attempt to forge a registration;

(3) No person shall vote in any election in the state unless the person is a qualified elector of this state and has registered to vote in the manner provided by law;

(4) It shall be unlawful for any person to offer, accept, receive, or pay any person any money, goods, wares, or merchandise or solicit any money, goods, wares, or merchandise for the purpose of influencing his or her vote during the progress of any election in this state;

(5) It shall be unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector;

(6) It shall be unlawful for any person to prevent or to interfere with any qualified elector from voting at any election or to attempt to prevent or interfere with any qualified elector from voting at any election, provided that this subdivision (a)(6) shall not prohibit good faith challenges of ballots or voters according to law by candidates, authorized representatives of candidates, political parties, or ballot issues;

(7) It shall be unlawful for any person to attend any polling site on election day and hand out or give away any campaign cards, placards, or other articles for the purpose of influencing the electors to vote for any candidate, except in the manner now provided by law;

(8) No person shall tamper with a voting machine or fraudulently affect or attempt to affect its results;

(9) No person may cast a ballot in more than one (1) party primary election on the same day in this state or for candidates for more than one (1) political party;

(10) No person shall vote in any election more than one (1) vote;

(11) No person shall vote or attempt to vote other than his or her legal ballot;

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## A.C.A. § 7-1-104

(12) No election official shall knowingly permit any person to vote other than his or her legal ballot in any election;

(13) No election official or other person shall fraudulently permit any person to vote illegally, refuse the vote of any qualified elector, or cast up or make a false return of any election;

(14) No election official or other person shall willfully make a false count of any election ballots or falsely or fraudulently certify the returns of any election;

(15) No person shall fraudulently change, alter, or obliterate the poll books or books of any election or break any seals upon any ballot box, voting machine, or stub box, except as authorized by law;

(16) No person shall contrive, alter, forge, counterfeit, detain, mutilate, steal, secrete, or destroy any election returns or election materials for the purpose of hindering or preventing or falsely reporting a tabulation or check of the returns; and

(17) Any person who violates the provisions of § 7-5-702 or who shall disclose how any voter may have voted unless compelled to do so in a judicial proceeding shall be deemed guilty of a Class D felony and punished as provided in this section.

(b)(1) Any person convicted of a felony as defined in this section shall be guilty of a Class D felony.

(2)(A) Any person convicted of a felony as defined in this section shall be barred from holding public office or employment in any of the departments of the state from the date of his conviction.

(B)(i) If the person is employed by any of the departments of this state at the time of his conviction, he shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

Acts of 1969, Act 465, Art. 11, § 5; Acts of 1995, Act 497, § 1; Acts of 1995, Act 1085, § 1; Acts of 1997, Act 445, § 3; Acts of 1999, Act 655, § 1, eff. July 30, 1999; Acts of 2001, Act 1553, § 17, eff. Aug. 13, 2001; Acts of 2003, Act 1458, § 1, eff. July 16, 2003; Acts of 2005, Act 1677, § 1, eff. Aug. 12, 2005.

Formerly A.S.A. 1947, § 3-1105.

## HISTORICAL AND STATUTORY NOTES

## 2005 Legislation

Technical changes were made to conform with the official Arkansas Code of 1987 as approved by the Arkansas Code Revision Commission.

## CROSS REFERENCES

Campaign practices pledge, falsification, see § 7-6-102.

Classification of offenses, determinate sentencing, misdemeanors and felonies, see § 5-4-401.

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A.C.A. § 7-1-104

Fines, restitution and imprisonment, punishment for misdemeanors and felonies generally, see § 5-4-104.

#### LIBRARY REFERENCES

Elections ↪332.  
Westlaw Key Number Search: 144k332.  
C.J.S. Elections § 353.

#### NOTES OF DECISIONS

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**Persons liable 3**  
**Vote buying 1**

##### 1. Vote buying

Evidence that defendant paid voter \$50 to obtain voter's blank absentee ballot and absentee voter statement was sufficient to support defendant's conviction of paying or offering to pay voter for voting, though voter did not personally complete absentee ballot by marking her candidate selections. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i(c). U.S. v. Campbell, 1988, 845 F.2d 782, rehearing denied, certiorari denied 109 S.Ct. 490, 488 U.S. 965, 102 L.Ed.2d 527. Elections ↪ 316

Where it had never been suggested that all or substantial number of contributors to political party made their contributions with end in view of having their money spent to violate election laws, court could not presume that they did so and disclosure of all contributors and amount of all contributions was not relevant or justified, even if prosecuting attorney's investigation of vote buying might be advanced if he knew that certain individuals had made contributions to account which prosecuting attorney sought to inspect and copy. Ark.Stats. § 43-801 et seq.; U.S.C.A.Const. Amends. 1, 14. Pollard v. Roberts, 1968, 283 F.Supp. 248, affirmed 89 S.Ct. 47, 393 U.S. 14, 21 L.Ed.2d 14. Elections ↪ 121(1)

Section 18, Act Feb. 5, 1913, Acts 1913, p. 74, making it unlawful to give or promise an office or anything of value for political support, aid, or vote of any person, held not to require the promise to be made to person to whom the office, etc., is to be given. Wright v. State, 1918, 133 Ark. 76, 202 S.W. 236. Elections ↪ 316

##### 2. Intimidation and violence

The constitutional requirements that popular elections shall be "by ballot" and be "free and equal," Art. 3, secs. 2, 3, are violated by a systematic plan to coerce voters to deposit their ballots in such manner as to disclose their contents to bystanders. Jones v. Glidewell, 1890, 53 Ark. 161, 13 S.W. 723. Elections ↪ 320

The purpose of statute prohibiting distribution of ballots outside of ballots ordered for use in election for purpose of instructing voters how to vote, was to prevent intimidation of voters and use of undue influence in elections. Pope's Dig. § 4873. Branton v. State, 1949, 214 Ark. 861, 218 S.W.2d 690, certiorari denied 70 S.Ct. 155, 338 U.S. 878, 94 L.Ed. 538. Elections ↪ 320

##### 3. Persons liable

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## A.C.A. § 7-1-104

The governor of a state is not "an officer of election," within the meaning of Act May 31, 1870, § 22, 16 Stat. 145, which makes it criminal for any "election officer" fraudulently to make any false certificate of the result of any congressional election. *U.S. v. Clayton*, 1871, 25 F.Cas. 458, 4 Chi.Leg.N. 50, 0 No. 14814. Elections ⇌ 322

## 4. Penalties and actions

Allegations that sheriff violated election laws by delivering ballots to precinct himself when he was candidate for re-election did not create forfeiture of office, by law, so as to support usurpation action, absent any actual conviction of election law violations. A.C.A. §§ 7-1-103(28, 29), 7-1-104, 7-5-211, 16-118-105. *Sargent v. Foster*, 1998, 966 S.W.2d 263, 332 Ark. 608. *Sheriffs And Constables* ⇌ 6

Kirby's Digest, § 1667, imposing a penalty upon any judge or clerk of any election who "shall neglect, improperly delay or refuse to perform any of the duties required by law," etc., is inapplicable to school elections not conducted under the general election law, as provided by Kirby's Digest, § 7591. *Brown v. Haselman*, 1906, 79 Ark. 213, 95 S.W. 136. Elections ⇌ 323

In a declaration against a judge of elections for the statutory penalty for permitting an elector to vote twice, it is sufficient to charge that he did so "intentionally, wrongfully, and from motives of partiality, contrary to the form," etc., without averring the name of the person for whom the elector voted. *Kirkpatrick v. Stewart*, 1858, 19 Ark. 695, Unreported. Elections ⇌ 323

A declaration in an action of debt against a judge of elections, under Eng.Dig. c. 61, § 28, to recover the penalty prescribed for neglect of duty and misbehavior in office in appointing a minor clerk, is sufficient if it charges that he did so "knowingly, willfully, wrongfully, and contrary to the form," etc., without charging that he did so corruptly and maliciously. *Kirkpatrick v. Stewart*, 1858, 19 Ark. 695, Unreported. Elections ⇌ 323

In a declaration for a penalty, under Eng.Dig. c. 61, § 28, it is sufficient to charge that the defendant took out the ballots and counted them before the polls were closed and the poll books signed, "intentionally, knowingly, and contrary to the form," etc., without averring that he acted corruptly and maliciously. *Kirkpatrick v. Stewart*, 1858, 19 Ark. 695, Unreported. Elections ⇌ 323

## 5. Federal law

The laws of the United States concerning elections at which congressmen are elected are paramount, and Mansf.Dig.Ark. § 2694, providing that "the judges of election shall securely envelop all the ballots which may have been received under seal, and return the same to the clerk of the proper county, which shall in no event be opened except in case of a contested election," cannot be held to justify the refusal of the clerk to produce the ballots before the grand jury of the United States, pending an investigation into alleged violations of federal election laws. *In re Massey*, 1890, 45 F. 629. Elections ⇌ 326

The crime of destroying the ballot box used and the ballot cast at an election for congressman and presidential electors can be punished by the state as well as the United States. *Mason v. State*, 1892, 55 Ark. 529, 18 S.W. 827. Elections ⇌ 325

The courts of the State have jurisdiction to punish the fraudulent destruction of ballots cast for electors of President and Vice President of the United States, notwithstanding a representative in congress is also voted for. *Mason v. State*, 1892, 55 Ark. 529, 18 S.W. 827. Elections ⇌ 325

## 6. Indictment

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## A.C.A. § 7-1-104

An indictment under Kirby's Dig. § 2825, charging election judges with making a false count of ballots, is not insufficient because it fails to set out the particular manner in which the false count was made or the names of the particular voters whose ballots were miscounted. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⤵ 328(3)

Such indictment held not insufficient because it fails to specify whether the ballots themselves were miscounted or whether there was a miscount of the number of votes. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⤵ 328(3)

An indictment for making false election returns under Kirby's Dig. § 2825, need not allege that the false certificate was delivered to the election commissioners; such delivery not being essential to the offense. *State v. Doughty*, 1918, 134 Ark. 435, 204 S.W. 968. Elections ⤵ 328(3)

In prosecution under Kirby's Dig. § 2783, for suppressing certificate of nomination of a candidate for sheriff, indictment held to sufficiently charge that petition of necessary number of qualified electors was filed with defendants, election commissioners, and that they suppressed the same. *State v. Hunter*, 1918, 134 Ark. 443, 204 S.W. 308. Elections ⤵ 328(3)

An indictment under Kirby's Dig. § 2783, as to suppression of certificate of nomination, was sufficient although it did not show that certificate of nomination was authenticated otherwise than by signatures of electors in view of section 2777. *State v. Hunter*, 1918, 134 Ark. 443, 204 S.W. 308. Elections ⤵ 328(3)

## 7. Evidence

Convictions for giving false information about names to establish eligibility to vote and aiding and abetting others in that offense were supported by evidence that defendants completed absentee ballot applications in the names of other registered voters, that one of them forged voters' signatures on some applications and others marked some applications with X's even though voters were able to sign their own names, and that ballots were voted in favor of candidate for whom defendants were working, without knowledge or permission of the voters; evidence as to one defendant's intent was sufficient despite contention that she was trying to help registered voters obtain the absentee ballots. 18 U.S.C.A. § 2; Voting Rights Act of 1965, § 11(c, e), as amended, 42 U.S.C.A. § 1973i(c, e). *U.S. v. Boards*, 1993, 10 F.3d 587, rehearing denied, certiorari denied 114 S.Ct. 2674, 512 U.S. 1205, 129 L.Ed.2d 810. Elections ⤵ 329

In prosecution for introducing fraudulent ballots in primary election with intent to affect count or recount of ballots, evidence on questions whether defendant had clipped name of unopposed candidate for township committeeman from certain ballots, and had encouraged certain voter to mark ballot for certain candidates was insufficient for jury. Ark.Stats. § 3-1525. *Williams v. State*, 1953, 222 Ark. 458, 261 S.W.2d 263. Elections ⤵ 330

In a prosecution for making a promise as consideration for political support in violation of section 18, Act Feb. 5, 1913, Acts 1913, p. 74, evidence held to sustain a conviction. *Wright v. State*, 1918, 133 Ark. 76, 202 S.W. 236. Elections ⤵ 329

Evidence held insufficient to show that accused falsified primary election returns. *Kelly v. State*, 1912, 102 Ark. 651, 145 S.W. 556. Elections ⤵ 329

## 8. Instructions

In a prosecution for making a promise as consideration for political support in violation of section 18, Act Feb. 5, 1913, Acts 1913, p. 74, held that the court correctly interpreted the statute and correctly declared the law in its



A.C.A. § 7-1-104

rulings on the instructions. *Wright v. State*, 1918, 133 Ark. 76, 202 S.W. 236. Elections ↩ 330

A.C.A. § 7-1-104, AR ST § 7-1-104

Current through 2006 First Extraordinary Session of the 85th General Assembly, including changes made by the Arkansas code Revision Commission as a result of the 2006 First Extraordinary Session.

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Ala.Code 1975 § 17-23-1

**This document has been updated. Use KEYCITE.**

Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs &amp; Annos)

**→ § 17-23-1. Illegal voting or attempting to vote.**

Any person who votes more than once at any election held in this state, or deposits more than one ballot for the same office as his vote at such election, or knowingly attempts to vote when he is not entitled to do so, or is guilty of any kind of illegal or fraudulent voting, must, on conviction, be imprisoned in the penitentiary for not less than two nor more than five years, at the discretion of the jury.

(Code 1876, § 4289; Code 1886, § 4185; Code 1896, § 4692; Code 1907, § 6788; Code 1923, § 3906; Code 1940, T. 17, § 302.)

## LIBRARY REFERENCES

29 C.J.S. Elections, §§ 325, n.1.

## CASENOTES

## 1. Scope of section

**Scope of section.** The language of this section is broad enough to embrace, and in fact does in *ipsis verbis* embrace, "any election held in this state." *Gandy v. State*, 82 Ala. 61, 2 So. 465 (Ala.1887). See also *Anderson v. State*, 72 Ala.187 (1882); *Washington v. State*, 75 Ala. 582 (1884).

## 2. "Election" defined

**"Election" defined.** The word "election" means the act of casting and receiving ballots, and the day and time of voting. *State v. Tucker*, 54 Ala.205 (Ala.1875).

## 3. The words "illegal or fraudulent" as used in this section are merely descriptive

**The words "illegal or fraudulent" as used in this section are merely descriptive** of the intent necessary for the commission of the offense. *Wilder v. State*, 401 So.2d 151 (Ala.Crim.App.1981), writ denied 401 So.2d 167, certiorari denied 102 S.Ct. 606, 454 U.S. 1057, 70 L.Ed.2d 595.

Clearly, the language of this section reflects a common understanding that "illegal or fraudulent voting" is voting more than one ballot for the same office, or attempting to vote when one is not entitled to do so. This section thus gives due notice of the criminal consequences of such action. *Wilder v. State*, 401 So.2d 151 (Ala.Crim.App.1981), writ denied 401 So.2d 167, certiorari denied 102 S.Ct. 606, 454 U.S. 1057, 70 L.Ed.2d 595.

## 4. Mistake as to qualifications

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Ala.Code 1975 § 17-23-2



**This document has been updated. Use KEYCITE.**

Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-2. Illegal voting at municipal elections.**

Any person who falsely impersonates another and thereby or otherwise fraudulently casts a vote to which he is not entitled, or having voted at such municipal election votes a second time, whether in the same ward or another, or having once obtained registration in any ward, shall cause himself to be registered a second time, or attempts to obtain a second registration, whether in the same or another name, or whether in the same or another ward, or shall aid or assist another not so entitled, knowing him not to be so entitled, to vote or to obtain registration as a voter, shall be guilty of a felony, and, on conviction in the circuit court, or court of like jurisdiction, of the county, shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than two years.

(Code 1907, § 6817; Code 1923, § 3935; Code 1940, T. 17, § 330.)

Ala. Code 1975 § 17-23-2, AL ST § 17-23-2

Current through End of 2006 Regular Session, except Act 2006-570.

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Ala.Code 1975 § 17-23-3



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-3. Bribing or attempting to influence voter.**

Any person who, by bribery or offering to bribe, or by any other corrupt means, attempts to influence any elector in giving his vote, or deter him from giving the same, or to disturb, or to hinder him in the free exercise of the right of suffrage, at any election, must, on conviction, be fined not less than \$50.00 nor more than \$500.00.

(Code 1876, § 4292; Code 1886, § 4187; Code 1896, § 4694; Code 1907, § 6790; Code 1923, § 3908; Code 1940, T. 17, § 304.)

#### LIBRARY REFERENCES

29 C.J.S. Elections, § 218.

Ala. Code 1975 § 17-23-3, AL ST § 17-23-3

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Ala.Code 1975 § 17-23-4



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-4. **Buying votes.**

Any person who buys or offers to buy any vote of any qualified elector at any election by the payment of money or the promise to pay the same at any future time, or by the gift of intoxicating liquors or other valuable thing, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than \$50.00 nor more than \$100.00.

(Code 1907, § 6808; Code 1923, § 3926; Code 1940, T. 17, § 321.)

Ala. Code 1975 § 17-23-4, AL ST § 17-23-4

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Ala.Code 1975 § 17-23-5



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-5. Selling votes.

Any qualified elector at any election who takes or receives any money or other valuable thing, upon the condition that the same shall be paid at any future time, in exchange for the vote of such elector for any particular candidate, or the promise to vote for any particular candidate, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$50.00 nor more than \$500.00. No witness shall be prosecuted for any offense under this section as to which he testified before the grand jury.

(Code 1907, § 6809; Code 1923, § 3927; Code 1940, T. 17, § 322.)

Ala. Code 1975 § 17-23-5, AL ST § 17-23-5

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Ala.Code 1975 § 17-23-6



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Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→§ 17-23-6. Candidate barred by bribery.**

Any candidate for office in any election, upon conviction of bribing or attempting to influence voter under Section 17-23-3, shall in addition to the fine, be declared ineligible for the office to which he was elected for that term.

(Code 1907, § 368; Code 1923, § 458; Code 1940, T. 17, § 141.)

#### LIBRARY REFERENCES

29 C.J.S. Elections, §§ 216(5), 325.

Ala. Code 1975 § 17-23-6, AL ST § 17-23-6

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Ala.Code 1975 § 17-23-7



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-7. Altering or changing vote of elector.

Any person who fraudulently alters or changes the vote of any elector, by which such elector is prevented from voting as he intended, must, on conviction, be fined not less than \$100.00 nor more than \$1,000.00, and imprisoned in the county jail for not less than 30 days nor more than six months.

(Code 1876, § 4293; Code 1886, § 4188; Code 1896, § 4695; Code 1907, § 6791; Code 1923, § 3909; Code 1940, T. 17, § 305.)

#### LIBRARY REFERENCES

29 C.J.S. Elections, § 340.

Ala. Code 1975 § 17-23-7, AL ST § 17-23-7

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Ala.Code 1975 § 17-23-8



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Code of Alabama Currentness

Title 17. Elections.

▣ Chapter 23. Miscellaneous Offenses. (Refs & Annos)

→ § 17-23-8. Disturbing elector on election day.

Any person who, on election day, disturbs or prevents, or attempts to prevent, any elector from freely casting his ballot must, on conviction, be fined not less than \$500.00 nor more than \$1,000.00, and also sentenced to hard labor for the county, or imprisoned in the county jail for not less than six months nor more than one year.

(Code 1876, § 4294; Code 1886, § 4189; Code 1896, § 4696; Code 1907, § 6792; Code 1923, § 3910; Code 1940, T. 17, § 306.)

**LIBRARY REFERENCES**

29 C.J.S. Elections, § 340.

Ala. Code 1975 § 17-23-8, AL ST § 17-23-8

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Ala.Code 1975 § 17-23-9



Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→§ 17-23-9. Becoming intoxicated about voting place on election day. Repealed by Acts 1977, No. 607, p. 812, § 9901, effective January 1, 1980.**

Ala. Code 1975 § 17-23-9, AL ST § 17-23-9

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Ala.Code 1975 § 17-23-10



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Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-10. Employer intimidating employee.**

Any employer who attempts by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$500.00.

(Code 1907, § 6804; Code 1923, § 3922; Code 1940, T. 17, § 317.)

#### LIBRARY REFERENCES

29 C.J.S. Elections, §§ 334(2), 344.

Ala. Code 1975 § 17-23-10, AL ST § 17-23-10

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Ala.Code 1975 § 17-23-11



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Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→ § 17-23-11. Coercion of employees of corporations.**

Any officer or agent of a corporation, or other person with authority to discharge employees, who shall attempt by coercion, intimidation, threats to discharge or to lessen the remuneration of any employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of any employee's ballot, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$500.00.

(Code 1907, § 6805; Code 1923, § 3923; Code 1940, T. 17, § 318.)

**LIBRARY REFERENCES**

29 C.J.S. Elections, § 334(2).

Ala. Code 1975 § 17-23-11, AL ST § 17-23-11

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Ala.Code 1975 § 17-23-12



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Code of Alabama Currentness

Title 17. Elections.

Chapter 23. Miscellaneous Offenses. (Refs & Annos)

**→§ 17-23-12. Providing false information to register or vote.**

Any person who knowingly provides false information in order to vote or register to vote in violation of Act 2003-313 shall be guilty of a Class A misdemeanor and upon conviction thereof shall be punished as provided by law.

(Act 2003-313, p. 733, § 11.)

**HISTORY**

Effective date:

The act which added this section is effective June 19, 2003.

**Code Commissioner's Notes**

Act 2003-313 added this section and Sections 17-1-8, 17-10A-1, 17-10A-2, and 17-25-1 through 17-25-4, and amended Sections 17-4-127, 17-4-129, 17-4-130, 17-4-136, 17-4-138, 17-4-150, 17-4-151, 17-4-187, 17-4-210 through 17-4-214, 17-4-230, 17-4-231, 17-4-250, 17-4-252 through 17-4-255, 17-5A-4 through 17-5A-6, 17-7-13, 17-8-43, 17-9-23, 17-10-4, 17-10-5, 17-10-9, 17-10-10, 17-10-23, 17-14-1, 17-14-20, 17-16-31, 17-16-35, 17-16-36, and 17-20-4.

Ala. Code 1975 § 17-23-12, AL ST § 17-23-12

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KRS § 119.005

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.005 Definitions**

- (1) A "ballot" or "official ballot" means the voting machine ballot label, ballot cards, paper ballots, an absentee ballot, a special ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary, general or special election by the Secretary of State or the county clerk;
- (2) "Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;
- (3) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device;
- (4) "Voting machine" or "machine" shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his vote in an election.

HISTORY: 1982 c 360, § 11, eff. 7-15-82

**KENTUCKY ADMINISTRATIVE CODE REFERENCES**

Regulations governing use of electronic voting systems, 31 KAR 2:010

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

KRS § 119.005, KY ST § 119.005

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KRS § 119.015

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.015 Clerk making or permitting wrongful registration, or failing or refusing to deliver copies of registration records**

Any county clerk or deputy county clerk who falsely or fraudulently registers the name of any person, or permits any person to register knowing that the person is not entitled to register, or who fails or refuses to deliver copies of the registration records to a person entitled thereto, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 64, eff. 7-13-90; 1974 c 130, § 63

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.015, formerly compiled as 124.010, created by 1974 c 130, § 63, eff. 6-21-74; 1942 c 208, § 1; KS 1486bb-17.

## CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Eligibility to vote, 116.025

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Voter registration, transfer, or change of party affiliation; county clerk to provide registration forms, cards, 116.045

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

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KRS § 119.025

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.025 Wrongful registration**

Any person who knowingly or fraudulently causes himself to be registered in more than one (1) precinct, or to be registered more than once, or in a precinct other than the one in which he is a legal voter, or who registers under any name other than his real name, or who gives a false address, or who in any manner causes himself to be registered when he is not legally entitled to register, or who makes a false oath as to his ability to read or write, or who knowingly or fraudulently aids, abets, counsels or advises in the commission of any such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 65, eff. 7-13-90; 1974 c 130, § 64

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.025, formerly compiled as 124.020, created by 1974 c 130, § 64, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-54, 1486bb-18.

## CROSS REFERENCES

2006 Main Volume Cross References

Eligibility to vote, 116.025

False swearing, 523.040

Falsification of signature or verification, 116.165

Forgery, alteration, destruction, or failure to return completed registration form, 116.047

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Verification of applications, 116.065

## KENTUCKY ADMINISTRATIVE CODE REFERENCES

Determining parole eligibility, 501 KAR 1:030

## LIBRARY REFERENCES

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KRS § 119.035

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.035 Alteration, suppression, mutilation, or destruction of registration record; making or using false or fraudulent record**

Any person who fraudulently or unlawfully alters any registration record, or fraudulently adds any name thereto, or willfully secretes, suppresses, mutilates or destroys any registration record, or makes or uses any false or fraudulent registration record, and any person who aids or abets in the commission of such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 66, eff. 7-13-90; 1974 c 130, § 65

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.035, formerly compiled as 124.030, created by 1974 c 130, § 65, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-55, 1486bb-17, 1486bb-19.

**CROSS REFERENCES**

2006 Main Volume Cross References

Access to registration records, 116.095

Falsification of signature or verification, 116.165

Forgery, alteration, destruction or failure to return completed registration form, 116.047

Forms for registration, 116.155

Sentence of imprisonment for Class D felony, 532.060

Transfer of registration, 116.085

Voter registration, change of party affiliation, 116.045

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KRS § 119.045

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.045 Interfering with registration**

Any person who attempts to or forcibly prevents any person from registering, or in any way unlawfully interferes with any person registering, or prevents or interferes with a clerk or registration officer in carrying out his duties with relation to the registration of voters, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 67, eff. 7-13-90; 1974 c 130, § 66

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.045, formerly compiled as 124.040, created by 1974 c 130, § 66, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-57, 1486bb-20.

## CROSS REFERENCES

2006 Main Volume Cross References

Sentence of imprisonment for Class A misdemeanor, 532.090

Voter registration, 116.045

## LIBRARY REFERENCES

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Elections ↪ 319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:21, Wrongful Registration.

KRS § 119.045, KY ST § 119.045

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KRS § 119.056

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.056 Alteration, mutilation, or suppression of nomination papers**

Any person in possession of nomination papers entitled to be filed under the statutes relating to primary elections who wrongfully alters, mutilates or suppresses such papers, or wrongfully fails to cause them to be filed at the proper time in the proper office, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 68, eff. 7-13-90; 1974 c 130, § 67

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.056, formerly compiled as 124.050, renumbered by the Reviser of Statutes and created by 1974 c 130, § 67, eff. 6-21-74; 1942 c 208, § 1; KS 1550-32.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class A misdemeanor, 532.090

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C.J.S. Elections § 331.

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KRS § 119.056

Abramson, Kentucky Practice, Substantive Criminal Law § 14:22, Nominating Papers.

KRS § 119.056, KY ST § 119.056

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KRS § 119.065

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.065 Forgery of nomination papers**

Any person who forges the name of a signer to a nomination paper shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 69, eff. 7-13-90; 1974 c 130, § 68

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.065, formerly compiled as 124.060, created by 1974 c 130, § 68, eff. 6-21-74; 1942 c 208, § 1; KS 1550-31.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class C felony, 532.060

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Abramson, Kentucky Practice, Substantive Criminal Law § 14:22, Nominating Papers.

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KRS § 119.076

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.076 Clerk's failure to place candidate's name on ballot**

Any county clerk who willfully and knowingly refuses or fails to have the name of any candidate printed upon the official ballot in the manner provided by law shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 70, eff. 7-13-90; 1974 c 130, § 69

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.076, formerly compiled as 124.070, created by 1974 c 130, § 69, eff. 6-21-74; 1942 c 208, § 1; KS 1457a.

**Note:** 119.076 contains provisions analogous to former 119.160, repealed by 1972 c 188, § 69, eff. 12-1-72.

## CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, 117.145

Sentence of imprisonment for Class D felony, 532.060

## LIBRARY REFERENCES

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C.J.S. Elections § 327.

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KRS § 119.095

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.095 Printer's violation of duty in printing ballots**

Any printer of ballots, or person employed in printing ballots, who prints or permits to be printed any ballot in any other form than the one prescribed by law, or with any name or device placed, spelled or arranged thereon other than as authorized and directed by the county clerk, or who gives or delivers, or knowingly permits to be taken, any ballot by any person other than the county clerk for whom the ballots are being printed, shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 71, eff. 7-13-90; 1974 c 130, § 71

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.095, formerly compiled as 124.090, created by 1974 c 130, § 71, eff. 6-21-74; 1942 c 208, § 1; KS 1463.

**CROSS REFERENCES**

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, special paper ballots and supplemental paper ballots; provision for write-in votes, 117.145

Sentence of imprisonment for Class C felony, 532.060

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↪318.

Westlaw Topic No. 144.

C.J.S. Elections § 331.

**RESEARCH REFERENCES**

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KRS § 119.105

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.105 Removal or destruction of election supplies or booths**

- (1) Any person who steals or willfully destroys any of the election supplies required to be furnished by the county clerk shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), and imprisoned in the county jail for not less than one (1) month nor more than six (6) months.
- (2) Any person who, during an election, knowingly and willfully removes or defaces the cards printed for the instruction of the voters, or destroys or removes any booth or other convenience provided for the election, or induces or attempts to induce any person to commit any such act, shall be imprisoned in the county jail for not less than six (6) months nor more than one (1) year.

HISTORY: 1974 c 130, § 72, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.105, formerly compiled as 124.100, created by 1974 c 130, § 72, eff. 6-21-74; 1942 c 208, § 1; KS 1465, 1568.

## LIBRARY REFERENCES

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Elections ↪319.  
Westlaw Topic No. 144.  
C.J.S. Elections § 330.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:24, Destruction or Removal of Election Supplies.

KRS § 119.105, KY ST § 119.105

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KRS § 119.015

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

▣ Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.015 Clerk making or permitting wrongful registration, or failing or refusing to deliver copies of registration records**

Any county clerk or deputy county clerk who falsely or fraudulently registers the name of any person, or permits any person to register knowing that the person is not entitled to register, or who fails or refuses to deliver copies of the registration records to a person entitled thereto, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 64, eff. 7-13-90; 1974 c 130, § 63

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.015, formerly compiled as 124.010, created by 1974 c 130, § 63, eff. 6-21-74; 1942 c 208, § 1; KS 1486bb-17.

CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Eligibility to vote, 116.025

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Voter registration, transfer, or change of party affiliation; county clerk to provide registration forms, cards, 116.045

LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

RESEARCH REFERENCES

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KRS § 119.025

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.025 Wrongful registration**

Any person who knowingly or fraudulently causes himself to be registered in more than one (1) precinct, or to be registered more than once, or in a precinct other than the one in which he is a legal voter, or who registers under any name other than his real name, or who gives a false address, or who in any manner causes himself to be registered when he is not legally entitled to register, or who makes a false oath as to his ability to read or write, or who knowingly or fraudulently aids, abets, counsels or advises in the commission of any such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 65, eff. 7-13-90; 1974 c 130, § 64

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

Note: 119.025, formerly compiled as 124.020, created by 1974 c 130, § 64, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-54, 1486bb-18.

## CROSS REFERENCES

2006 Main Volume Cross References

Eligibility to vote, 116.025

False swearing, 523.040

Falsification of signature or verification, 116.165

Forgery, alteration, destruction, or failure to return completed registration form, 116.047

Qualifications for voting in primary election, 116.055

Sentence of imprisonment for Class D felony, 532.060

Verification of applications, 116.065

## KENTUCKY ADMINISTRATIVE CODE REFERENCES

Determining parole eligibility, 501 KAR 1:030

## LIBRARY REFERENCES

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KRS § 119.035

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.035 Alteration, suppression, mutilation, or destruction of registration record; making or using false or fraudulent record**

Any person who fraudulently or unlawfully alters any registration record, or fraudulently adds any name thereto, or willfully secretes, suppresses, mutilates or destroys any registration record, or makes or uses any false or fraudulent registration record, and any person who aids or abets in the commission of such act, shall be subject to the penalties prescribed for Class D felonies.

HISTORY: 1990 c 48, § 66, eff. 7-13-90; 1974 c 130, § 65

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.035, formerly compiled as 124.030, created by 1974 c 130, § 65, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-55, 1486bb-17, 1486bb-19.

## CROSS REFERENCES

2006 Main Volume Cross References

Access to registration records, 116.095

Falsification of signature or verification, 116.165

Forgery, alteration, destruction or failure to return completed registration form, 116.047

Forms for registration, 116.155

Sentence of imprisonment for Class D felony, 532.060

Transfer of registration, 116.085

Voter registration, change of party affiliation, 116.045

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KRS § 119.045

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.045 Interfering with registration**

Any person who attempts to or forcibly prevents any person from registering, or in any way unlawfully interferes with any person registering, or prevents or interferes with a clerk or registration officer in carrying out his duties with relation to the registration of voters, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 67, eff. 7-13-90; 1974 c 130, § 66

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.045, formerly compiled as 124.040, created by 1974 c 130, § 66, eff. 6-21-74; 1942 c 208, § 1; KS 1486b-57, 1486bb-20.

**CROSS REFERENCES**

2006 Main Volume Cross References

Sentence of imprisonment for Class A misdemeanor, 532.090

Voter registration, 116.045

**LIBRARY REFERENCES**

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Elections ↪319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:21, Wrongful Registration.

KRS § 119.045, KY ST § 119.045

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KRS § 119.056

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.056 Alteration, mutilation, or suppression of nomination papers**

Any person in possession of nomination papers entitled to be filed under the statutes relating to primary elections who wrongfully alters, mutilates or suppresses such papers, or wrongfully fails to cause them to be filed at the proper time in the proper office, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 68, eff. 7-13-90; 1974 c 130, § 67

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.056, formerly compiled as 124.050, renumbered by the Reviser of Statutes and created by 1974 c 130, § 67, eff. 6-21-74; 1942 c 208, § 1; KS 1550-32.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class A misdemeanor, 532.090

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 318.

Westlaw Topic No. 144.

C.J.S. Elections § 331.

## RESEARCH REFERENCES

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KRS § 119.065

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.065 Forgery of nomination papers**

Any person who forges the name of a signer to a nomination paper shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 69, eff. 7-13-90; 1974 c 130, § 68

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.065, formerly compiled as 124.060, created by 1974 c 130, § 68, eff. 6-21-74; 1942 c 208, § 1; KS 1550-31.

## CROSS REFERENCES

2006 Main Volume Cross References

Filing of nomination papers, 118.165

Independent candidates filing to fill vacancy, 118.375

Petition for nomination, 118A.060

Sentence of imprisonment for Class C felony, 532.060

## LIBRARY REFERENCES

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Elections ↩318.

Westlaw Topic No. 144.

C.J.S. Elections § 331.

## RESEARCH REFERENCES

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:22, Nominating Papers.

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KRS § 119.076

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.076 Clerk's failure to place candidate's name on ballot**

Any county clerk who willfully and knowingly refuses or fails to have the name of any candidate printed upon the official ballot in the manner provided by law shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 70, eff. 7-13-90; 1974 c 130, § 69

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.076, formerly compiled as 124.070, created by 1974 c 130, § 69, eff. 6-21-74; 1942 c 208, § 1; KS 1457a.

**Note:** 119.076 contains provisions analogous to former 119.160, repealed by 1972 c 188, § 69, eff. 12-1-72.

CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, 117.145

Sentence of imprisonment for Class D felony, 532.060

LIBRARY REFERENCES

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C.J.S. Elections § 327.

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KRS § 119.095

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.095 Printer's violation of duty in printing ballots**

Any printer of ballots, or person employed in printing ballots, who prints or permits to be printed any ballot in any other form than the one prescribed by law, or with any name or device placed, spelled or arranged thereon other than as authorized and directed by the county clerk, or who gives or delivers, or knowingly permits to be taken, any ballot by any person other than the county clerk for whom the ballots are being printed, shall be guilty of a Class C felony.

HISTORY: 1990 c 48, § 71, eff. 7-13-90; 1974 c 130, § 71

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.095, formerly compiled as 124.090, created by 1974 c 130, § 71, eff. 6-21-74; 1942 c 208, § 1; KS 1463.

## CROSS REFERENCES

2006 Main Volume Cross References

Ballot labels for judicial primary election, 118A.060

Ballot labels for judicial regular election, 118A.090

Preparation of ballot labels, special paper ballots and supplemental paper ballots; provision for write-in votes, 117.145

Sentence of imprisonment for Class C felony, 532.060

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↩318.

Westlaw Topic No. 144.

C.J.S. Elections § 331.

## RESEARCH REFERENCES

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KRS § 119.105

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.105 Removal or destruction of election supplies or booths**

- (1) Any person who steals or willfully destroys any of the election supplies required to be furnished by the county clerk shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), and imprisoned in the county jail for not less than one (1) month nor more than six (6) months.
- (2) Any person who, during an election, knowingly and willfully removes or defaces the cards printed for the instruction of the voters, or destroys or removes any booth or other convenience provided for the election, or induces or attempts to induce any person to commit any such act, shall be imprisoned in the county jail for not less than six (6) months nor more than one (1) year.

HISTORY: 1974 c 130, § 72, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.105, formerly compiled as 124.100, created by 1974 c 130, § 72, eff. 6-21-74; 1942 c 208, § 1; KS 1465, 1568.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 319.  
Westlaw Topic No. 144.  
C.J.S. Elections § 330.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:24, Destruction or Removal of Election Supplies.

KRS § 119.105, KY ST § 119.105

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- (7) Delivers a ballot (other than an absentee ballot) to an inspector that is not the ballot the voter receives from the poll clerk or assistant poll clerk.
- (8) Delivers an absentee ballot to a team of absentee ballot counters appointed under IC 3-11.5-4-22, a county election board, a circuit court clerk, or an absentee voting board under IC 3-11-10 that is not the ballot cast by the absentee voter.
- (9) Delivers an absentee ballot prepared by the voter for voting to a county election board, except for:
- (A) the inspector;
  - (B) a member of the precinct election board temporarily acting for the inspector;
  - (C) a member or an employee of a county election board (acting under the authority of the board and in accordance with state law) or an absentee voter board member acting under IC 3-11-10; or
  - (D) a member of the voter's household or an individual designated as attorney in fact for the voter, [or] an employee of:
    - (i) the United States Postal Service; or
    - (ii) a bonded courier company;
 (acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot under IC 3-11-10-1.
- (10) Possesses an unmarked absentee ballot on or before the date of the election for which the absentee ballot has been printed, unless the person is authorized to possess the absentee ballot under this title as any of the following:
- (A) A printer, when arranging for the delivery of unmarked absentee ballots to a county election board under IC 3-11-2.
  - (B) A county election board member or employee (acting under the authority of the board and in accordance with state law).
  - (C) An absentee voter board member.
  - (D) An employee of:
    - (i) the United States Postal Service; or
    - (ii) a bonded courier company;
 (acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot.
  - (E) An individual authorized under IC 3-11-10-24 to deliver an absentee ballot.
  - (F) An absentee ballot counter under IC 3-11.5.

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(G) A provisional ballot counter.

(H) A precinct election officer.

(I) The voter who applied for the absentee ballot.

(11) Completes or signs an absentee ballot application for a voter, or assists a voter in completing an absentee ballot application in violation of IC 3- 11.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.467; P.L.5-1989, SEC.73; P.L.3-1993, SEC.232; P.L.19-1993, SEC.3; P.L.4-1996, SEC.88; P.L.38-1999, SEC.70; P.L.103-2005, SEC.27.

## HISTORICAL AND STATUTORY NOTES

## 2006 Main Volume

P.L.3-1987, Sec.467, eff. Dec. 1, 1987, inserted all provisions relating to assistant poll clerks.

P.L.5-1989, Sec.73, in Subsec. (4), inserted "or a member of a county election board or an absentee voter board acting under IC 3-11-10"; in Subsec. (7), inserted "(other than an absentee ballot)" substituted "that is not" for "except"; and substituted "ballot" for "one"; added Subsec. (8); and made nonsubstantive changes throughout the entire section.

P.L.3-1993, Sec.232 and P.L.19-1993, Sec.3, identically amended this section by inserting in subsec. (8) "team of absentee ballot counters appointed under IC 3-11.5-4-22".

P.L.4-1996, Sec.88, emerg. eff. March 21, 1996, designated Subsecs.(4)(A) through (4)(c); added Subsec. 4(D); and made other nonsubstantive changes.

## 1999 Legislation

P.L.38-1999, Sec.70, emerg. eff. April 23, 1999, inserted "precinct" in Subsec. (1); inserted "Except when receiving assistance under IC 3-11-9," in Subsec. (2); inserted "Except when offering assistance requested by a voter in accordance with IC 3-11-9," in Subsec. (3); designated Subsec. (6)(A); and added Subsec. (6)(B).

## 2005 Legislation

P.L.103-2005, Sec.27, amended this section by inserting "or an employee", "(acting under the authority of the board and state law)", and "member" in Subsec. (4)(C); rewriting Subsec. (4)(D), which read: "a member of the voter's household or an individual designated as attorney in fact for the voter, when delivering an envelope containing an absentee ballot under IC 34-11-10-1"; and adding Subsecs. (9) to (11).

## Formerly:

IC 3-1-32-40.

Acts 1945, c. 208, s. 426.

Acts 1978, P.L.2, SEC.341.

## CROSS REFERENCES

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**C**

West's Annotated Indiana Code Currentness

Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 2. Vote Fraud

**->3-14-2-17 Marking ballot to indicate to another person how voter has voted**

Sec. 17. A voter at an election who knowingly writes or places on a ballot a name, sign, or device as a distinguishing mark by which to indicate to any other person how the voter has voted commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume

**Formerly:**

IC 3-1-32-27.

IC 3-1-32-30.

Acts 1945, c. 208, ss. 413, 416.

Acts 1978, P.L.2, SECS.328, 331.

**CROSS REFERENCES**

Voter instruction cards, copy of this section, see IC 3-11-3-23.

**LIBRARY REFERENCES**

2006 Main Volume

Elections ↪313.

Westlaw Topic No. 144.

C.J.S. Elections § 325.

**RESEARCH REFERENCES**

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**Encyclopedias**

Ind. Law Encycl. Elections § 78, Vote Fraud -- Conduct as to Ballots, Manner of Voting, Recording of Vote, or Voting Record; Altering of Vote.

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IC 3-14-2-18

**C**

West's Annotated Indiana Code Currentness

Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 2. Vote Fraud

**→3-14-2-18 Disclosure of vote**

Sec. 18. A voter who knowingly:

(1) does anything to enable any other person to see or know for what ticket, candidates, or public questions the voter has voted; or

(2) moves into a position, or does any other thing, to enable the voter to see or know for what ticket, candidates, or public questions any other voter votes;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.209; P.L.103-2005, SEC.28; P.L.221-2005, SEC.134.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.10-1988, Sec.209, emerg. eff. April 1, 1988, inserted "or public questions" in Subsecs. (1) and (2); and made other nonsubstantive changes.

2005 Legislation

P.L.103-2005, Sec.28, amended this section by substituting "system" for "machine" in Subsecs. (1) and (2).

P.L.221-2005, Sec.134, amended this section, as amended by P.L.103-2005, SEC.28, by deleting "on a voting system" preceding the last "or" in Subsec. (1), and at the end of Subsec. (2).

**Formerly:**

IC 3-1-32-30.

Acts 1945, c. 208, s. 416.

Acts 1978, P.L.2, SEC.331.

## LIBRARY REFERENCES

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**C**

West's Annotated Indiana Code Currentness

Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 2. Vote Fraud

**→3-14-2-19 Forgery of official ballot endorsement; printing or circulating imitation ballot**

Sec. 19. (a) A person who knowingly:

(1) forges or falsely makes the official endorsement of a ballot; or

(2) prints or circulates an imitation ballot;

commits a Class D felony.

(b) This section does not prohibit the printing or circulation of a sample ballot or a reproduction of an official ballot if the sample or reproduction complies with IC 3-9-3-2.5 and the printing or circulation does not violate IC 3-14-1-2.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.66-2003, SEC.51.

HISTORICAL AND STATUTORY NOTES

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2003 Legislation

P.L.66-2003, Sec.51, amended this section by designating the formerly undesignated language as Subsec. (a); and adding Subsec. (b).

**Formerly:**

IC 3-1-32-48.

Acts 1945, c. 208, s. 434.

Acts 1951, c. 12, s. 11.

Acts 1978, P.L.2, SEC.346.

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**C**

West's Annotated Indiana Code Currentness

Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 2. Vote Fraud

**→ 3-14-2-20 Deceptive registration of vote**

Sec. 20. A person who knowingly:

- (1) deceives a voter in registering the voter's vote under IC 3-11-8; or
- (2) registers a voter's vote in a way other than as requested by the voter;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.468.

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P.L.3-1987, Sec.468, eff. Dec. 1, 1987, deleted former Subsec. (3); substituted "Class D felony" for "class A misdemeanor; and made other nonsubstantive changes. Prior to amendment, former Subsec. (3) read:

"(3) gives information to any other person as to what ticket or candidates a voter voted;"

**Formerly:**

IC 3-2-3-3.

Acts 1982, P.L.12, SEC.3.

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**→3-14-2-21 Fraudulent inducement to vote other than as intended**

Sec. 21. A person who fraudulently causes a voter at an election to vote for a person different from the one the voter intended to vote for or on a public question different from the vote the voter intended to cast commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.469; P.L.10-1988, SEC.210.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.469, eff. Dec. 1, 1987, substituted "Class D felony" for "class A misdemeanor".

P.L.10-1988, Sec.210, emerg. eff. April 1, 1988, inserted "or on a public question different from the vote the voter intended to cast".

**Formerly:**

IC 3-1-32-38.

Acts 1945, c. 208, s. 424.

Acts 1978, P.L.2, SEC.339.

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**→3-14-2-22 False representation of ballot to non-English speaking voter**

Sec. 22. A person who knowingly furnishes a voter who cannot read the English language with a ballot at an election that the person represents to the voter as containing a name different from the one printed or written on it commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.470.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.470, eff. Dec. 1, 1987, substituted "ballot" for "ticket" and "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-37.

Acts 1945, c. 208, s. 423.

Acts 1978, P.L.2, SEC.338.

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**→3-14-2-23 Opening, destruction or unauthorized delivery of ballots by custodian of ballots**

Sec. 23. A person entrusted with the custody of ballots who knowingly:

- (1) opens a package in which the ballots are contained;
- (2) destroys a ballot; or
- (3) delivers such a package or ballot to a person not entitled to receive it;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-20.

Acts 1945, c. 208, s. 406.

Acts 1978, P.L.2, SEC.321.

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**→3-14-2-24 Removal or destruction of ballots; false entries in poll book; false tallying**

Sec. 24. A person who:

- (1) takes a ballot legally deposited out of a ballot box or out of a voting system for the purpose of destroying the ballot or substituting another ballot in its place;
- (2) destroys or misplaces a ballot with the intent to substitute another ballot for it or with the intent to prevent it from being counted; or
- (3) knowingly enters upon the pollbooks the name of a person who has not legally voted or knowingly tallies a vote for a candidate or on a public question not voted for by the ballot;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.211; P.L.103-2005, SEC.29.

## HISTORICAL AND STATUTORY NOTES

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P.L.10-1988, Sec.211, emerg. eff. April 1, 1988, inserted "or on a public question" in subsec. (3).

2005 Legislation

P.L.103-2005, Sec.29, amended this section by rewriting Subsec. (1), which read: "takes a ballot legally deposited out of a ballot box for the purpose of destroying it or substituting another in its place".

**Formerly:**

IC 3-1-32-32.

Acts 1945, c. 208, s. 418.

Acts 1978, P.L.2, SEC.333.

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**→3-14-2-25 Marking or defacing ballots by precinct election board member or authorized election personnel**

Sec. 25. A member of a precinct election board or county election board, a person employed at the central counting headquarters, or a person charged with a duty in connection with an election or entrusted with the custody or control of a ballot either before or after voting who marks or defaces a ballot for the purpose of:

- (1) identifying the ballot (except by numbering protested ballots for future reference as provided by law); or
- (2) vitiating the ballot;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-24.

Acts 1945, c. 208, s. 410.

Acts 1978, P.L.2, SEC.325.

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**→3-14-2-26 Tampering with ballot container or contents**

Sec. 26. A person who:

- (1) during the progress of an election or within the time for preparation required under this title, knowingly breaks open or violates the seal or lock of a ballot box, envelope, container, bag, or voting system component in which ballots have been deposited;
- (2) knowingly obtains a ballot box, envelope, container, bag, or voting system component that contains ballots and cancels, withholds, or destroys a ballot;
- (3) knowingly increases or decreases the number of ballots legally deposited in a ballot box, envelope, container, bag, or voting system component; or
- (4) knowingly makes a fraudulent erasure or alteration on a tally sheet, poll book, list of voters, or election return deposited in a ballot box, envelope, bag, or voting system component;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.471; P.L.103-2005, SEC.30.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.471, eff. Dec. 1, 1987, substituted "the time for preparation required under this title" for "one hundred eighty (180) days after it" in Subsec. (1); and inserted "container," in Subsecs. (1) through (3).

2005 Legislation

P.L.103-2005, Sec.30, amended this section by deleting "or" following "container" in Subsecs. (1) to (3), and following "envelope" in Subsec. (4); inserting "or voting system component" in Subsecs. (1) to (3); and adding "or voting system component" at the end of Subsec. (4).

**Formerly:**

IC 3-1-32-15.

Acts 1945, c. 208, s. 401.

Acts 1978, P.L.2, SEC.317.

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**→3-14-2-27 Causing vote to be incorrectly taken down; false statement, certificate, or return**

Sec. 27. A precinct election officer at the close of the polls, an absentee ballot counter acting under IC 3-11.5-5 or IC 3-11.5-6, or a provisional ballot counter acting under IC 3-11.7-5 who knowingly:

- (1) causes the vote to be incorrectly taken down for a candidate or public question; or
- (2) makes a false statement, certificate, or return of any kind of that vote;

commits a Class D felony.

**CREDIT(S)**

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.472; P.L.3-1993, SEC.233; P.L.19-1993, SEC.4; P.L.126-2002, SEC.89.

**HISTORICAL AND STATUTORY NOTES****2006 Main Volume**

P.L.3-1987, Sec.472, eff. Dec. 1, 1987, substituted "A precinct election officer" for "An inspector or poll clerk in a precinct" in the first paragraph; and deleted "registered on a voting machine" following "vote" in Subsec. (1).

P.L.3-1993, Sec.233 and P.L.19-1993, Sec.4, amended the section by identical language by inserting "or an absentee ballot counteracting under IC 3-11.5-5 or IC 3-11.5-6, who" in the introductory paragraph.

**2002 Legislation**

P.L.126-2002, Sec.89, eff. Jan. 1, 2003, amended this section by deleting "or" following "polls", and inserting "or a provisional ballot counter acting under IC 3-11.7-5", in the introductory language.

**Formerly:**

IC 3-1-32-23.

Acts 1945, c. 208, s. 409.

Acts 1978, P.L.2, SEC.324.

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**→3-14-2-28 Fraudulent alteration of election return; intentional destruction of poll book or tally; fraudulent alteration of vote as returned**

Sec. 28. A person who:

- (1) with intent to defraud, alters an election return;
- (2) knowingly destroys, misplaces, or loses a poll book or tally sheet; or
- (3) with intent to defraud, alters the vote of a candidate or on a public question as returned by the county election board or its employees;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.212.

**HISTORICAL AND STATUTORY NOTES**

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P.L.10-1988, Sec.212, emerg. eff. April 1, 1988, inserted "or on a public question" in Subsec. (3).

**Formerly:**

IC 3-1-32-33.

Acts 1945, c. 208, s. 419.

Acts 1978, P.L.2, SEC.334.

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**→3-14-2-29 Inspecting voting system without authorization**

Sec. 29. A person who knowingly inspects a voting system under IC 3-12-4- 18 without obtaining authorization from the state recount commission to conduct the inspection commits a Class D felony.

CREDIT(S)

As added by P.L.3-1987, SEC.473. Amended by P.L.103-2005, SEC.31.

**HISTORICAL AND STATUTORY NOTES**

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P.L.3-1987, Sec.473, eff. Dec. 1, 1987.

2005 Legislation

P.L.103-2005, Sec.31, amended this section by deleting "voting machine or electronic" following "inspects a".

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**→3-14-2-30 Voting at multiple town conventions**

Sec. 30. A person who knowingly votes at a town convention in violation of IC 3-8-5-11(c) commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.167-2001, SEC.9.

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**→3-14-3-1.1 False, fictitious, or fraudulent registration applications or ballots**

Sec. 1.1. A person who knowingly does any of the following commits a Class D felony:

(1) Procures or submits voter registration applications known by the person to be materially false, fictitious, or fraudulent.

(2) Procures, casts, or tabulates ballots known by the person to be materially false, fictitious, or fraudulent.

CREDIT(S)

As added by P.L.103-2005, SEC.32.

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**→3-14-3-2 Failure to cast or return ballot in authorized manner**

Sec. 2. A person who, having procured an official ballot, knowingly fails to cast or return it in the prescribed manner commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

**Formerly:**

IC 3-1-22-16.

Acts 1945, c. 208, s. 211.

Acts 1978, P.L.2, SEC.306.

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**→3-14-3-3 Interference with watcher's duties**

Sec. 3. A person who knowingly:

- (1) interferes with a watcher;
- (2) prevents a watcher from performing the watcher's duties;
- (3) otherwise violates:
  - (A) IC 3-6-8-3;
  - (B) IC 3-6-8-4;
  - (C) IC 3-6-8-5;
  - (D) IC 3-6-8-6;
  - (E) IC 3-6-9; or
  - (F) IC 3-6-10; or
- (4) violates IC 3-11-13-44(d);

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.5-1989, SEC.74; P.L.2-1998, SEC.9; P.L.221-2005, SEC.135.

## HISTORICAL AND STATUTORY NOTES

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P.L.5-1989, Sec.74, inserted Subsecs. (3)(A) through (3)(F); added Subsec. (4); and made a nonsubstantive change.

1998 Legislation

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**→3-14-3-4 Obstruction of, interference with, or injury of election officer or voter**

Sec. 4. (a) A person who:

- (1) knowingly obstructs or interferes with an election officer in the discharge of the officer's duty; or
- (2) knowingly obstructs or interferes with a voter within the chute;

commits a Class D felony.

(b) A person who knowingly injures an election officer or a voter:

- (1) in the exercise of the officer's or voter's rights or duties; or
- (2) because the officer or voter has exercised the officer's or voter's rights or duties;

commits a Class D felony.

(c) A person called as a witness to testify against another for a violation of this section is a competent witness to prove the offense even though the person may have been a party to the violation. The person shall be compelled to testify as other witnesses. However, the person's evidence may not be used against the person in a prosecution growing out of matters about which the person testifies, and the person is not liable to indictment or information for the offense.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.33.

## HISTORICAL AND STATUTORY NOTES

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2005 Legislation

P.L.103-2005, Sec.33, amended this section by deleting "fifty (50) feet of" following "within", and substituting "chute" for "polls", in Subsec. (a)(2); inserting present Subsec. (b); and redesignating former Subsec. (b) as present Subsec. (c), and dividing the former first sentence therein into the present first two sentences.

**Formerly:**

IC 3-1-32-19.

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**→3-14-3-5 Tampering with voting system**

Sec. 5. A precinct election officer who, with the intent to cause or permit a ballot card voting system or an electronic voting system to fail to correctly register all votes cast, tampers with or disarranges the system or any part of it commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.474; P.L.221-2005, SEC.136.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.474, eff. Dec. 1, 1987, substituted "A precinct election officer" for "An inspector or poll clerk in a precinct"; inserted "ballot card voting system, or electronic voting system" and "system or"; and made other nonsubstantive changes.

2005 Legislation

P.L.221-2005, Sec.136, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

**Formerly:**

IC 3-1-32-22.

Acts 1945, c. 208, s. 408.

Acts 1978, P.L.2, SEC.323.

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**→3-14-3-6 Allowing inaccurately adjusted voting system to be used**

Sec. 6. A precinct election officer who permits a ballot card voting system or an electronic voting system to be used for voting at an election, with knowledge of the fact that the system is not in order or not perfectly set and adjusted so that it will correctly register all votes cast, commits a Class D felony.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.475; P.L.221-2005, SEC.137.

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P.L.3-1987, Sec.475, eff. Dec. 1, 1987, substituted "A precinct election officer" for "An inspector or poll clerk in a precinct"; and inserted "ballot card voting system, or electronic voting system" and "or system".

## 2005 Legislation

P.L.221-2005, Sec.137, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

**Formerly:**

IC 3-1-32-22.

Acts 1945, c. 208, s. 408.

Acts 1978, P.L.2, SEC.323.

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**→3-14-3-7 Removal, change, or mutilation of voting system for purpose of deceiving voter**

Sec. 7. An inspector or poll clerk in a precinct who, for the purpose of:

- (1) deceiving a voter;
- (2) causing it to be doubtful for what ticket, candidate, or public question a vote is cast; or
- (3) causing it to appear that votes cast for one (1) ticket, candidate, or public question were cast for another ticket, candidate, or public question;

removes, changes, or mutilates a voting system or any part of a voting system commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.34.

## HISTORICAL AND STATUTORY NOTES

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2005 Legislation

P.L.103-2005, Sec.34, amended this section by inserting "(1)" in Subsec. (3); and rewriting the concluding language, which read: "removes, changes, or mutilates a ballot label on a voting machine or any part thereof commits a Class D felony".

**Formerly:**

IC 3-1-32-22.

Acts 1945, c. 208, s. 408.

Acts 1978, P.L.2, SEC.323.

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**→3-14-3-8 Damaging, disarranging, or tampering with voting system**

Sec. 8. A person other than a precinct election officer who knowingly, before or during an election:

- (1) damages, disarranges, or tampers with a ballot card system or an electronic voting system; or
- (2) damages a ballot label placed or to be placed on the electronic voting system, or any other appliance used in connection with the ballot card voting system or electronic voting system;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.476; P.L.221-2005, SEC.138.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.476, eff. Dec. 1, 1987, inserted "precinct" before "election officer" in the first paragraph; deleted "and after the ballot label has been placed on a voting machine" from the end of the first paragraph; added provisions relating to ballot card systems and electronic voting systems in Subsecs. (1) and (2); and made other nonsubstantive changes.

## 2005 Legislation

P.L.221-2005, Sec.138, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

**Formerly:**

IC 3-1-32-31.

Acts 1945, c. 208, s. 417.

Acts 1978, P.L.2, SEC.332.

## LIBRARY REFERENCES

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**→3-14-3-9 Failure to receive vote of legal voter**

Sec. 9. A person who knowingly fails to receive the vote of a legal voter at an election commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.477.

**HISTORICAL AND STATUTORY NOTES**

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P.L.3-1987, Sec.477, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-34.

Acts 1945, c. 208, s. 420.

Acts 1978, P.L.2, SEC.335.

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**→3-14-3-10 Removal, defacing or destruction of supplies, instruction cards from voting booth; removal or destruction of voting booth**

Sec. 10. A person who during an election recklessly:

- (1) removes or destroys any of the supplies or other conveniences placed in the voting booths or delivered to the voter for the purpose of enabling a voter to prepare a ballot;
- (2) removes or defaces the cards printed for the instruction of the voters; or
- (3) removes or destroys a voting booth, railing, or other convenience provided for the election;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.478.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.478, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-39.

Acts 1945, c. 208, s. 425.

Acts 1978, P.L.2, SEC.340.

## CROSS REFERENCES

Voter instruction cards, copy of this section, see IC 3-11-3-23.

## LIBRARY REFERENCES

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**→3-14-3-11 Tampering with marking device, ballot or record or equipment; interference with operation or secrecy of voting**

Sec. 11. A person who recklessly:

- (1) tampers with or damages a marking device, ballot, or other record or equipment used in an election;
- (2) interferes with the correct operation of such a device or equipment; or
- (3) interferes with the secrecy of voting;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

- IC 3-2-4-10.
- Acts 1965, c. 281, s. 10.
- Acts 1967, c. 319, s. 10.
- Acts 1978, P.L.2, SEC.358.
- P.L.14-1985, SEC.13.

**LIBRARY REFERENCES**

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- Elections ↔317.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 215, 329, 356.

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**→3-14-3-12 Leaving poll with ballot or ballot marking device**

Sec. 12. A voter who recklessly attempts to leave the polls with a ballot, the pencil, or other marking device used in marking ballots in the voter's possession commits a Class A misdemeanor. A voter who attempts to leave the polls with a ballot, pencil, or other marking device in the voter's possession shall be arrested at once on demand of any member of the precinct election board.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.479.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.479, eff. Dec. 1, 1987, inserted "or other marking device" twice; and made other nonsubstantive changes.

## RESEARCH REFERENCES

2006 Electronic Update

**Encyclopedias**

Ind. Law Encycl. Elections § 74, Interference With Free and Equal Elections -- Removal, Destruction, Interference With Proper Use, or Unauthorized Possession Of, Election Supplies, Devices or Equipment.

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**→3-14-3-13 Removal of ballot or marking device from polls; possession outside polls**

Sec. 13. A person who during an election knowingly:

- (1) removes a ballot, pencil, or other marking device from the polls; or
- (2) possesses outside the polls a ballot, pencil, or other marking device either genuine or counterfeit;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.480.

**HISTORICAL AND STATUTORY NOTES**

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P.L.3-1987, Sec.480, eff. Dec. 1, 1987, inserted "or other marking device" in Subsecs. (1) and (2); and made other nonsubstantive changes.

**Formerly:**

IC 3-1-32-45.

Acts 1945, c. 208, s. 431.

Acts 1978, P.L.2, SEC.343.

**CROSS REFERENCES**

Voter instruction cards, copy of this section, see IC 3-11-3-23.

**RESEARCH REFERENCES**

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**Encyclopedias**

Ind. Law Encycl. Elections § 74, Interference With Free and Equal Elections -- Removal, Destruction, Interference With Proper Use, or Unauthorized Possession Of, Election Supplies, Devices or Equipment.

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**→3-14-3-14 Printers; unauthorized printing or delivery of ballots**

Sec. 14. A printer of the ballots for an election, or person employed in printing the ballots, who knowingly:

- (1) delivers a ballot to a person other than the co-directors or authorized representative of the election division or a county election board for which the ballots are being printed;
- (2) prints a ballot in any form other than the one prescribed by law; or
- (3) prints a ballot containing any names, spellings, or arrangements other than as authorized by the commission or a county election board;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1997, SEC.403.

## HISTORICAL AND STATUTORY NOTES

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**1997 Legislation**

P.L.3-1997, Sec.403, emerg. eff. retroactive to Jan. 1, 1997, amended the section by substituting "the co-directors or authorized representative of the election division" for "a member of the state election board" in Subsec. (1); and substituting "commission" for "state election board" in Subsec. (3).

**Formerly:**

IC 3-1-32-46.

Acts 1945, c. 208, s. 432.

Acts 1978, P.L.2, SEC.344.

## LIBRARY REFERENCES

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**→3-14-3-15 Unauthorized entries at polls**

Sec. 15. A person not authorized by this title who recklessly:

(1) enters the polls;

(2) enters within the railing leading from the challenge window or door to the entrance of the polls without having been passed by the challengers or having been sworn in; or

(3) remains within the polls or within the chute in violation of IC 3-11-8- 15 or IC 3-11-8-16;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1997, SEC.404; P.L.14-2004, SEC.176, eff. Mar. 16, 2004.

## HISTORICAL AND STATUTORY NOTES

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**1997 Legislation**

P.L.3-1997, Sec.404, amended the section by inserting "the polls or within", "entrance to the", and "in violation of IC 3-11-8-15 or IC 3-11- 8-16", in Subsec. (3).

**2004 Legislation**

P.L.14-2004, Sec.176, emerg. eff. Mar. 16, 2004.

**Formerly:**

IC 3-1-32-47.

Acts 1945, c. 208, s. 433.

Acts 1978, P.L.2, SEC.345.

## CROSS REFERENCES

Voter instruction cards, copy of this section, see IC 3-11-3-23.

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**→3-14-3-16 Electioneering**

Sec. 16. (a) As used in this section, "electioneering" includes expressing support or opposition to any candidate or political party or expressing approval or disapproval of any public question in any manner that could reasonably be expected to convey that support or opposition to another individual. The term does not include expressing support or opposition to a candidate or a political party or expressing approval or disapproval of a public question in:

- (1) material mailed to a voter; or
- (2) a telephone or an electronic communication with a voter.

(b) A person who knowingly does any electioneering:

(1) on election day within:

- (A) the polls; or
- (B) the chute;

(2) within an area in the office of the circuit court clerk or a satellite office of the circuit court clerk established under IC 3-11-10-26.3 used by an absentee voter board to permit an individual to cast an absentee ballot; or

(3) except for a voter who is:

- (A) the person's spouse;
- (B) an incapacitated person (as defined in IC 29-3-1-7.5) for whom the person has been appointed the guardian (as defined in IC 29-3-1-6); or
- (C) a member of the person's household;

in the presence of a voter whom the person knows possesses an absentee ballot provided to the voter in accordance with Indiana law;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1997, SEC.405; P.L.66-2003, SEC.52; P.L.14-2004, SEC.177, eff. Mar. 16, 2004; P.L.103-2005, SEC.35; P.L.164-2006, SEC.132, eff. Mar. 24, 2006.

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**→3-14-3-17 Inducement of votes by board member or precinct election officer prohibited**

Sec. 17. A member of a precinct election board, a precinct election officer, or a member of an absentee voter board who knowingly induces or persuades a voter to vote for a candidate or for or against a public question while acting as a board member or precinct election officer commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.481; P.L.10-1988, SEC.213; P.L.3-1997, SEC.406.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.481, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

P.L.10-1988, Sec.213, emerg. eff. April 1, 1988, inserted "or for or against a public question".

**1997 Legislation**

P.L.3-1997, Sec.406, amended the section by inserting "a precinct election officer, or a member of an absentee voter board" and "while acting as a board member or precinct election officer".

**Formerly:**

IC 3-1-32-35.

Acts 1945, c. 208, s. 421.

Acts 1978, P.L.2, SEC.336.

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**→3-14-3-18 Actions to unlawfully influence voter or candidate**

Sec. 18. (a) As used in this section, "candidate" includes an individual whom the person knows is considering becoming a candidate.

(b) A person who, for the purpose of influencing a voter or candidate, does any of the following commits a Class D felony:

- (1) Seeks to enforce the payment of a debt by force or threat of force.
- (2) Ejects or threatens to eject the voter or candidate from a house the voter or candidate occupies.
- (3) Begins a criminal prosecution.
- (4) Damages the business or trade of the voter or candidate.
- (5) Communicates a threat to commit a forcible felony (as defined in IC 35- 41-1-11) against a voter or candidate with the intent that the voter or candidate:
  - (A) engage in conduct against the voter's or candidate's will; or
  - (B) be placed in fear of retaliation for a prior lawful act as a voter or candidate.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.176-1999, SEC.118; P.L.103-2005, SEC.36.

## HISTORICAL AND STATUTORY NOTES

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**1999 Legislation**

P.L.176-1999, Sec.118, amended the section by adding Subsec. (a) and inserting "or candidate" throughout Subsec. (b).

## 2005 Legislation

P.L.103-2005, Sec.36, amended this section by adding ", does any of the following commits a Class D felony" at the end of the introductory language of Subsec. (b); deleting "or" at the end of Subsec. (b)(3); adding Subsec.

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**→3-14-3-19 Inducing votes by gift or offer to compensate**

Sec. 19. A person who, for the purpose of inducing or procuring another person to:

(1) apply for or cast an absentee ballot; or

(2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention;

gives, offers, or promises to any person any money or other property commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.482; P.L.103-2005, SEC.37.

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

P.L.3-1987, Sec.482, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

2005 Legislation

P.L.103-2005, Sec.37, amended this section by rewriting the contents thereof, which read: "A person who, for the purpose of inducing or procuring another person to vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention, gives, offers, or promises to any person any money or other property commits a Class D felony".

**Formerly:**

IC 3-1-30-11.

IC 3-1-32-1.

IC 3-1-32-4 to 3-1-32-8.

IC 3-4-7-1.

Acts 1945, c. 208, ss. 376, 387, 390 to 394.

Acts 1975, P.L.19, SEC.3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.362.

## LAW REVIEW AND JOURNAL COMMENTARIES

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**→3-14-3-20 Acceptance or solicitation of compensation to induce or procure votes**

Sec. 20. A person who, for the purpose of inducing or procuring a voter to:

(1) apply for or cast an absentee ballot; or

(2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention;

receives, accepts, requests, or solicits from any person any money or other property commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.483; P.L.103-2005, SEC.38.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.483, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

2005 Legislation

P.L.103-2005, Sec.38, amended this section by rewriting the contents thereof, which read: "A person who, for the purpose of inducing or procuring a voter to vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention, receives, accepts, requests, or solicits from any person any money or other property commits a Class D felony".

**Formerly:**

IC 3-1-30-11.

IC 3-1-32-2.

IC 3-1-32-5.

IC 3-4-7-2.

Acts 1945, c. 208, ss. 376, 388, 391.

Acts 1975, P.L.19, SEC.3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.363.

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**→3-14-3-20.5 False or fraudulent absentee ballot applications or voter registration applications**

Sec. 20.5. (a) This section does not apply to activity subject to 18 U.S.C. 1341.

(b) An individual who knowingly:

(1) conspires to obtain property the individual would be entitled to receive as compensation for serving as an elected official by securing false or fraudulent absentee ballot applications or voter registration applications; and

(2) for the purpose of executing the conspiracy:

(A) causes the applications to be sent or delivered by a private or commercial carrier operating entirely within Indiana; or

(B) takes or receives from the private or commercial carrier the false or fraudulent applications, or causes the applications to be delivered by the carrier to another person;

commits a Class D felony.

CREDIT(S)

As added by P.L.103-2005, SEC.39.

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C.J.S. Elections § 326.

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**→3-14-3-21 Influencing political opinions or actions of employees in the workplace**

Sec. 21. A person who:

(1) pays employees the salary or wages due in pay envelopes upon which there is printed or in which there is enclosed a political motto, device, or argument containing threats intended or calculated to influence the political opinions or actions of the employees; or

(2) exhibits in the workplace of the person's employees a handbill or placard containing a threat, notice, or information that, if a particular ticket, candidate, or public question is elected, approved, or defeated:

(A) work in the person's place or establishment will cease in whole or in part;

(B) the person's establishment will be closed; or

(C) the wages of the employees will be reduced;

or that is otherwise intended or calculated to influence the political opinions or actions of the employees;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.484; P.L.10-1988, SEC.214.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.484, eff. Dec. 1, 1987, deleted "within ninety (90) days of an election" from the beginning of Subsec. (2); and substituted "Class D felony" for "Class B misdemeanor".

P.L.10-1988, Sec.214, emerg. eff. April 1, 1988, inserted "or public question" and "approved," in the first paragraph in Subsec. (2); and made a nonsubstantive change.

**Formerly:**

IC 3-1-30-11.

IC 3-4-7-3.

Acts 1945, c. 208, s. 376.

Acts 1975, P.L.19, SEC.3.

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**→3-14-3-21.5 Voter intimidation**

Sec. 21.5. A person who knowingly or intentionally intimidates, threatens, or coerces an individual for:

- (1) voting or attempting to vote;
- (2) urging or aiding another individual to vote or attempt to vote; or
- (3) exercising any power or duty under this title concerning registration or voting;

commits voter intimidation, a Class D felony.

CREDIT(S)

As added by P.L.103-2005, SEC.40.

**LIBRARY REFERENCES**

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Elections ↪320.

Westlaw Topic No. 144.

C.J.S. Elections §§ 333, 334(2).

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**→3-14-3-23 Poll list maintenance violations**

Sec. 23. A proprietor, a manager, or an association of co-owners who violates IC 3-6-11-5 or IC 3-6-11-7 commits a Class C infraction.

CREDIT(S)

As added by P.L.7-1990, SEC.51.

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**→3-14-3-24 Poll list use violations**

Sec. 24. An organization that violates IC 3-6-11-7.5 commits a Class C infraction.

CREDIT(S)

As added by P.L.7-1990, SEC.52.

**LIBRARY REFERENCES**

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C.J.S. Elections §§ 324, 355(2).

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**Encyclopedias**

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**→3-14-4-1 Unlawfully serving as precinct election board member**

Sec. 1. A person who knowingly serves as a member of a precinct election board in violation of IC 3-6-6 commits a Class D felony.

## CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.486.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

P.L.3-1987, Sec.486, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-5-1.

Acts 1945, c. 208, s. 25.

Acts 1951, c. 19, s. 1.

Acts 1965, c. 261, s. 3.

Acts 1969, c. 222, s. 4.

Acts 1978, P.L.2, SEC.301.

P.L.7-1985, SEC.1.

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**→3-14-4-2 Inspectors; negligent or knowing failure to appear at election board's office**

Sec. 2. An inspector who negligently or knowingly fails to appear at the county election board's office in person or by representative as required by IC 3-11-3 commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.487.

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P.L.3-1987, Sec.487, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-16.

Acts 1945, c. 208, s. 402.

Acts 1978, P.L.2, SEC.318.

## LIBRARY REFERENCES

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**→3-14-4-3 Omission in performance of required duties**

Sec. 3. A precinct election officer or public official upon whom a duty is imposed by this title who knowingly omits to perform the duty commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-17.

Acts 1945, c. 208, s. 403.

Acts 1969, c. 222, s. 35.

Acts 1978, P.L.2, SEC.319.

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**→3-14-4-3.5 Voter registration information violations**

Sec. 3.5. A circuit court clerk, a member of a board of registration, a county official, or another person responsible for maintaining computerized voter registration information who recklessly fails to comply with IC 3-7- 26.3 more than thirty (30) days after being required to perform a duty under IC 3-7-26.3 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.3-1993, SEC.234. Amended by P.L.12-1995, SEC.89; P.L.3-1995, SEC.135; P.L.209-2003, SEC.193; P.L.164-2006, SEC.133.

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2006 Legislation

P.L.164-2006, Sec.133, amended this section by deleting Subsec. (a) and the first sentence in Subsec. (b).

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P.L.3-1995, Sec.135, emerg. eff. retroactive to Jan. 1, 1995, rewrote the section. Prior to amendment, the section read:

"A circuit court clerk, member of a board of registration, or county official responsible for maintaining computerized voter registration information who recklessly fails to comply with IC 3-7-7.5 (until its repeal January 1, 1995) or IC 3-7-26 (after December 31, 1994) more than thirty (30) days after being required to perform a duty under IC 3-7-7.5 (until its repeal January 1, 1995) or IC 3-7-26 (after December 31, 1994) commits a Class B misdemeanor."

P.L.12-1995, Sec.89, emerg. eff. retroactive to Jan. 1, 1995 added "(until its repeal January 1, 1995) or IC 3-7-26 (after December 31, 1994)" twice and deleted "not" after "IC 3-7-75".

2003 Legislation

P.L.209-2003, Sec.193, amended this section by inserting "(a) This subsection applies before January 1, 2006."; and by adding Subsec. (b).

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**→3-14-4-4 Allowing observance of voter preparing ballot**

Sec. 4. A member of a precinct election board who recklessly allows a booth or compartment in which a voter is preparing a ballot to be used:

(1) without a screen; or

(2) with a screen arranged so as not to shield the preparation of the ballot from observation;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.488.

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P.L.3-1987, Sec.488, eff. Dec. 1, 1987, substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-23-17.

Acts 1945, c. 208, s. 256.

Acts 1947, c. 120, s. 31 1/2.

Acts 1969, c. 222, s. 30.

Acts 1978, P.L.2, SEC.309.

Acts 1979, P.L.4, SEC.5.

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**→3-14-4-6 Deposit of ballots not initialed or ballots externally defaced**

Sec. 6. An inspector, or person acting in the inspector's behalf, who knowingly deposits:

- (1) a ballot upon which the initials of the poll clerks or authorized assistant poll clerks do not appear; or
- (2) a ballot on which appears externally a distinguishing mark or defacement;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.490.

**HISTORICAL AND STATUTORY NOTES**

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P.L.3-1987, Sec.490, eff. Dec. 1, 1987, inserted "or authorized assistant poll clerks" in Subsec. (1); and substituted "Class D felony" for "Class A misdemeanor".

**Formerly:**

IC 3-1-32-26.

Acts 1945, c. 208, s. 412.

Acts 1978, P.L.2, SEC.327.

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**→3-14-4-7 Disclosure of how voter voted or information regarding appearance of ballot voted**

Sec. 7. A member of a precinct election board or a person otherwise entitled to the inspection of the ballots who knowingly:

- (1) reveals to another person how a voter has voted; or
- (2) gives information concerning the appearance of any ballot voted;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-28.

Acts 1945, c. 208, s. 414.

Acts 1978, P.L.2, SEC.329.

**CROSS REFERENCES**

Reading of this section to precinct election board, see IC 3-11-8-14.

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**→3-14-4-8 Opening or marking ballot or ascertaining how voter voted**

Sec. 8. A member of a precinct election board, an absentee ballot counter appointed under IC 3-11.5-4-22, or a provisional ballot counter appointed under IC 3-11.7-3 who knowingly:

- (1) opens or marks, by folding or otherwise, a ballot presented by a voter, except as provided by law; or
- (2) tries to find out how the voter voted before the ballot is deposited in the ballot box or cast on a ballot card voting system or an electronic voting system or counted by the absentee ballot counter;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.491; P.L.3-1993, SEC.235 and P.L.19-1993, SEC.5; P.L.126-2002, SEC.90; P.L.221-2005, SEC.139.

## HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.491, eff. Dec. 1, 1987, rewrote Subsec. (2); and substituted "Class D felony" for "Class A misdemeanor". Prior to amendment, Subsec. (2) read:

"(2) tries to find out the names on a ballot before the ballot is deposited in the ballot box;"

P.L.3-1993, Sec.235 and P.L.19-1993, Sec.5, amended the section by identical language to make the provisions applicable to absentee ballot counters.

## 2002 Legislation

P.L.126-2002, Sec.90, eff. Jan. 1, 2003, amended this section by deleting "or" following "board", and inserting "or a provisional ballot counter acting under IC 3-11.7-3", in the introductory language.

## 2005 Legislation

P.L.221-2005, Sec.139, amended this section by deleting all references to voting machines; and making related nonsubstantive changes.

**Formerly:**

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**→3-14-4-9 Disclosure of votes or electioneering**

Sec. 9. An election officer who knowingly:

(1) discloses to a person the name of a candidate for whom a voter has voted or how a voter voted on a public question; or

(2) does any electioneering on election day;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.215; P.L.66-2003, SEC.53.

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P.L.10-1988, Sec.215, emerg. eff. April 1, 1988, inserted "or how a voter voted on a public question" in Subsec. (1).

2003 Legislation

P.L.66-2003, Sec.53, amended this section by substituting "Class A misdemeanor" for "Class D felony" in the concluding language.

**Formerly:**

IC 3-1-32-40.

Acts 1945, c. 208, s. 426.

Acts 1978, P.L.2, SEC.341.

## CROSS REFERENCES

Voter instruction cards, copy of this section, see IC 3-11-3-23.

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**→3-14-4-10 Provision of information concerning absentee vote count before closing of polls**

Sec. 10. A person who knowingly violates:

- (1) IC 3-11.5-5;
- (2) IC 3-11.5-6;
- (3) IC 3-12-2-1;
- (4) IC 3-12-3-14; or
- (5) IC 3-12-3.5-7;

by providing any other person with information concerning the number of votes a candidate received for an office or cast to approve or reject a public question on absentee ballots counted under IC 3-11.5-5, IC 3-11.5-6, or IC 3-12 before the closing of the polls commits a Class D felony.

## CREDIT(S)

As added by P.L.3-1993, SEC.236 and P.L.19-1993, SEC.6. Amended by P.L.3-1995, SEC.136; P.L.221-2005, SEC.140.

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P.L.3-1993, Sec.236 and P.L.19-1993, Sec.6, added the section by identical language.

P.L.3-1995, Sec.136, emerg. eff. May 10, 1995, amended the section by designating Subsecs. (1) and (2); adding Subsecs. (3) through (6); adding "or IC 3-12" in the concluding paragraph; and making other nonsubstantive changes.

## 2005 Legislation

P.L.221-2005, Sec.140, amended this section by deleting former Subsec. (4), which read: "IC 3-12-2.5-9"; and redesignating former Subsecs. (5) and (6) as present Subsecs. (4) and (5).

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**→3-14-5-1 Affidavit against illegal voter**

Sec. 1. (a) This section applies during an election whenever a voter makes an affidavit before the inspector in a precinct that a person who has voted is an illegal voter in the precinct. This section does not apply to an affidavit executed by an individual who:

- (1) is subject to the requirements set forth in IC 3-7-33-4.5;
- (2) is challenged solely as a result of the individual's inability or refusal to comply with IC 3-7-33-4.5; and
- (3) subsequently complies with IC 3-7-33-4.5 before the close of the polls on election day.

(b) Immediately after the close of the polls the inspector shall deliver the affidavit to the county election board for delivery by the prosecuting attorney for the county to the grand jury under section 2 of this chapter. The prosecuting attorney for the county shall:

- (1) proceed as if the affidavit had been made before the prosecuting attorney; and
- (2) ensure that the grand jury notifies the NVRA official under section 2 of this chapter if a violation of NVRA appears to have occurred.

**CREDIT(S)**

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.90; P.L.2-1996, SEC.207; P.L.3-1997, SEC.407; P.L.230-2005, SEC.66.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

P.L.12-1995, Sec.90, emerg. eff. retroactive to Jan. 1, 1995, designated the subsections; deleted "a primary, general, or municipal" after "during" in Subsec. (a); added Subsec. (b)(2); and made other nonsubstantive changes.

P.L.2-1996, Sec.207, emerg. eff. March 10, 1996, substituted "NVRA official" for "executive director of the state election board" in Subsec. (b)(2).

**1997 Legislation**

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**→3-14-5-2 Affidavits; packaging, sealing, endorsing and delivery to grand jury; inquiry by grand jury**

Sec. 2. (a) Each precinct election board shall, at the close of the polls, place all affidavits prescribed by this title for use on election day to determine the eligibility of a precinct election officer (or a person who wishes to cast a ballot) in a strong paper bag or envelope and securely seal it. Each member shall endorse that member's name on the back of the bag or envelope.

(b) The inspector and judge of the opposite political party shall deliver the sealed bag or envelope to the county election board. The county election board shall do the following:

- (1) Remove the affidavits from the bag or envelope.
- (2) Mail a copy of each affidavit to the secretary of state.
- (3) Replace the affidavits within the bag or envelope.
- (4) Reseal the bag or envelope with the endorsement of the name of each county election board member on the back of the bag or envelope.
- (5) Carefully preserve the resealed bag or envelope and deliver it, with the county election board's seal unbroken, to the foreman of the grand jury when next in session.

(c) The grand jury shall inquire into the truth or falsity of the affidavits, and the court having jurisdiction over the grand jury shall specially charge the jury as to its duties under this section.

(d) The grand jury shall file a report of the result of its inquiry with:

- (1) the court; and
- (2) the NVRA official if a violation of NVRA appears to have occurred.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.91; P.L.2-1996, SEC.208; P.L.3-1997, SEC.408; P.L.230-2005, SEC.67.

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**→3-14-5-3 Duty to report violations to prosecuting attorney and violator; presentation to grand jury**

Sec. 3. (a) This section does not apply to a violation of NVRA or IC 3- 7.

(b) The commission and each county election board shall report a violation of this title as a felony or misdemeanor to the appropriate prosecuting attorney and the alleged violator.

(c) The commission and boards may have the report transmitted and presented to the grand jury of the county in which the violation was committed at its first session after making the report and at subsequent sessions that may be required. The commission and boards shall furnish the grand jury any evidence at their command necessary in the investigation and prosecution of the violation.

**CREDIT(S)**

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.92; P.L.2-1996, SEC.209; P.L.81-2005, SEC.31, eff. April 25, 2005.

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P.L.12-1995, Sec.92, emerg. eff. retroactive to Jan. 1, 1995, added Subsec. (a); designated Subsecs. (b) and (c); substituted "this title as a felony or misdemeanor" for "law" in Subsec. (b); and deleted ", the attorney general," after "prosecuting attorney" in Subsec. (b).

P.L.2-1996, Sec.209, emerg. eff. March 10, 1996, amended the section by substituting "commission" for "state election board" in Subsec. (b); and by inserting "commission and" twice in Subsec. (c).

**2005 Legislation**

P.L.81-2005, Sec.31, emerg. eff. April 25, 2005, amended this section by deleting "(after December 31, 1994)" at the end of Subsec. (a).

**Formerly:**

IC 3-4-5-13.

Acts 1976, P.L.6, SEC.1.

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**→3-14-5-4 Prosecution of violators**

Sec. 4. In addition to the duties prescribed by IC 33-39, the prosecuting attorney of each circuit shall prosecute each resident of the circuit who the prosecutor believes has violated IC 3-14-1-7, IC 3-14-1-10, IC 3-14-1-13, IC 3-14-1-14, or IC 3-14-1-14.5 in any circuit of the state.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1995, SEC.137; P.L.3-1997, SEC.409; P.L.98-2004, SEC.45.

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P.L.3-1995, Sec.137, amended the section by deleting "IC 3-14-1-8", "IC 3-14-1-9", "IC 3-14-1-12", and "IC 3-14-1-15", and adding "IC 3-14-1-14.5".

**1997 Legislation**

P.L.3-1997, Sec.409, emerg. eff. May 13, 1997, deleted "IC 3-14-1-4" from the sequence of IC section citations..

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**→3-14-5-5 Indictment or information; allegations**

Sec. 5. When an election offense is committed, an indictment or information for the offense is sufficient if it alleges that the election was authorized by law without stating the names of the officers holding the election, the candidates voted for, or the offices filled at the election.

**CREDIT(S)**

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-66.

Acts 1945, c. 208, s. 452.

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**→3-14-5-6 Criminal prosecutions; self-incrimination defense not available to witness**

Sec. 6. In a criminal prosecution for violation of IC 3-14-1-7, IC 3- 14-1-10, IC 3-14-1-13, IC 3-14-1-14, or IC 3-14-1-14.5, a witness, except the person who is accused and on trial, may not be excused from answering a question or producing a book, paper, or other thing on the ground that the witness' answer or the thing to be produced may tend to incriminate the witness or render the witness liable to a penalty. However, the witness' answer or the thing produced by the witness may not be used in a proceeding against the witness, except in a prosecution for perjury in so testifying.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1995, SEC.138; P.L.3-1997, SEC.410.

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P.L.3-1995, Sec.138, amended the section by deleting "IC 3-14-1-8", "IC 3-14-1-9", "IC 3-14-1-12", and "IC 3-14-1-15", and adding "IC 3-14-1-14.5".

**1997 Legislation**

P.L.3-1997, Sec.410, emerg. eff. May 13, 1997, deleted "IC 3-14-1-4" from the sequence of IC section citations..

**Formerly:**

IC 3-1-30-14.

IC 3-1-30-15.

IC 3-1-32-3.

IC 3-4-7-7.

Acts 1945, c. 208, ss. 379, 380, 389.

Acts 1976, P.L.6, SEC.1.

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→3-14-5-7 Informants; immunity

Sec. 7. If a person who has given or received money or other property to or from another person for the purpose of influencing any voter's vote at an election informs upon and testifies against the person receiving or giving the money in a criminal prosecution, the person informing and testifying may not be prosecuted in connection with the transaction.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-9.

Acts 1945, c. 208, s. 395.

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West's Annotated Indiana Code Currentness

Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 5. Enforcement Provisions

**→3-14-5-8 Employment of persons convicted of vote fraud; reemployment; injunctions and civil penalties**

Sec. 8. (a) As used in this section, "governmental entity" refers to any of the following:

- (1) A city.
- (2) A town.
- (3) A school corporation.
- (4) An agency of a governmental entity referred to in any of subdivisions (1) through (3).

(b) As used in this section, "date of conviction" refers to the date when:

- (1) in a jury trial, a jury publicly announces a verdict against a person for a felony or Class A misdemeanor;
- (2) in a bench trial, the court publicly announces a verdict against a person for a felony or Class A misdemeanor;  
or
- (3) in a guilty plea hearing, a person pleads guilty or nolo contendere to a felony or Class A misdemeanor.

(c) A person who is convicted under IC 3-14-2 of a felony or Class A misdemeanor that relates to an election for an office for a governmental entity shall not:

- (1) continue employment with;
- (2) obtain future employment with;
- (3) contract with; or
- (4) be a subcontractor under a contract with;

any governmental entity for at least twenty (20) years after the date of conviction.

(d) For at least twenty (20) years after the person's date of conviction, a governmental entity may not:

- (1) employ;
- (2) offer employment to;

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- (3) contract with; or
- (4) maintain a contractual relationship when a subcontractor is;

a person who is convicted under IC 3-14-2 of a felony or Class A misdemeanor that relates to an election for an office for any governmental entity.

(e) If:

- (1) a person was employed by a governmental entity;
- (2) the person was convicted under IC 3-14-2 of a felony or Class A misdemeanor relating to an election for an office for a governmental entity;
- (3) the person's employment with the governmental entity was discontinued under subsection (c) or (d); and
- (4) the person's conviction is reversed, vacated, or set aside;

the governmental entity shall reemploy the person in the same position the person held before the person's conviction or in another position equivalent in benefits, pay, and working conditions to the position the person held before the person's conviction, and the person is entitled to receive any salary or other remuneration that the person would have received if the person's employment had not been discontinued under subsection (c) or (d).

(f) The attorney general may petition a court with jurisdiction for an injunction against a person who violates subsection (c) or a governmental entity that violates subsection (d).

(g) The attorney general may petition a court with jurisdiction to impose a civil penalty of not more than one thousand dollars (\$1,000) on a person who violates subsection (c).

CREDIT(S)

As added by P.L.164-2006, SEC.134.

I.C. 3-14-5-8, IN ST 3-14-5-8

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Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 6. Election Profiteering

**→3-14-6-1.1 Grant of request for voter information to be used in prohibited manner; violations**

Sec. 1.1. (a) A person who grants a request for voter registration information under IC 3-7-26.3 or IC 3-7-27 with knowledge that the information will be used in a manner prohibited by IC 3-7-26.3 or IC 3-7-27 commits a Class B infraction.

(b) A person who has previously received a judgment for committing an infraction under this section and knowingly, intentionally, or recklessly violates this section a second time commits a Class D felony.

CREDIT(S)

As added by P.L.209-2003, SEC.195. Amended by P.L.164-2006, SEC.135.

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2006 Legislation

P.L.164-2006, Sec.135, amended this section by deleting Subsec. (a); and redesignating former Subsecs. (b) and (c) as present Subsecs. (a) and (b).

**Formerly:**

IC 3-14-6-1.

P.L.13-1992, SEC.4.

P.L.8-1995, SEC.66.

P.L.12-1995, SEC.93.

P.L.2-1996, SEC.210.

P.L.3-1997, SEC.411.

P.L.209-2003, SEC.194.

## LIBRARY REFERENCES

2006 Main Volume

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

I.C. 3-14-6-1.1, IN ST 3-14-6-1.1

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West's Annotated Indiana Code Currentness

Title 3. Elections

▣ Article 14. Offenses

▣ Chapter 6. Election Profiteering

**→3-14-6-2 Use of voter registration information for solicitation; infraction; misdemeanor**

Sec. 2. (a) This section does not apply to:

- (1) political activities; or
- (2) political fundraising activities.

(b) A person who uses voter registration information obtained under IC 3-7- 26.3 or IC 3-7-27 to solicit the sale of merchandise, goods, services, or subscriptions commits a Class B infraction.

(c) The court shall:

- (1) keep a record; and
- (2) send a copy of the record to the prosecuting attorney of the county in which the infraction proceeding was tried;

of a judgment for an infraction proceeding tried under this section.

(d) A person who:

- (1) has previously received a judgment for committing an infraction under this section; and
- (2) knowingly or intentionally uses voter registration information in violation of this section;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.13-1992, SEC.4. Amended by P.L.12-1995, SEC.94; P.L.3-1997, SEC.412; P.L.209-2003, SEC.196; P.L.164-2006, SEC.136.

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2006 Legislation

P.L.164-2006, Sec.136, amended this section by deleting "IC 3-7-26" and "(after December 31, 2005)," from Subsec. (b).

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KRS § 119.115

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.115 Unauthorized possession of key to voting machine; tampering with, injuring, or destroying ballot labels or voting machines**

- (1) Any unauthorized person found in possession of any key to a voting machine to be used or being used in any primary, general, or special election shall be guilty of a Class A misdemeanor.
- (2) Any person who, during or before any primary, general, or special election, willfully tampers with or attempts to tamper with, disarrange, deface, or impair in any manner whatsoever, injures, or destroys any ballot label, or destroys any such voting machine while in use at an election or at any other time, or who shall, after such machine is locked and sealed in order to preserve the record of the vote, tamper with or attempt to tamper with the record of the vote, or who aids or abets with intent to destroy or change the record of the vote shall be guilty of a Class D felony.
- (3) Any election official, or other person entrusted with the custody or control of any voting machine who, with intent to cause or permit any voting machine to fail to correctly register votes cast thereon, tampers with or disarranges such machine in any way, unlawfully opens such voting machine, prevents or attempts to prevent the correct operation of such voting machine or causes such voting machine to be used or consents to its being used for any election with knowledge of the fact that the machine is not in order, or not perfectly set and adjusted to correctly register all votes cast thereon, or removes, changes, or mutilates any ballot label on a voting machine shall be guilty of a Class D felony.

HISTORY: 1992 c 463, § 11, eff. 7-14-92; 1990 c 48, § 72; 1984 c 111, § 65; 1974 c 277, § 1

## CROSS REFERENCES

## 2006 Main Volume Cross References

Custody of machines, 117.135

Examination of machines by county board, 117.165

Period machines to remain locked, custody of keys, 117.295

Sentence of imprisonment for Class A misdemeanor, 532.090

## LIBRARY REFERENCES

## 2006 Main Volume Library References

Elections ↻319.

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KRS § 119.125

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Baldwin's Kentucky Revised Statutes Annotated Currentness

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Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.125 Sheriff's failure to hold election or perform other election duties**

Any sheriff who willfully fails to cause an election to be held, as required by law, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any sheriff who willfully fails to perform any other duty concerning an election, for which there is no penalty specifically prescribed, shall be fined not less than twenty dollars (\$20) nor more than two hundred dollars (\$200).

HISTORY: 1974 c 130, § 73, eff. 6-21-74

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.125, formerly compiled as 124.110, created by 1974 c 130, § 73, eff. 6-21-74; 1942 c 208, § 1; KS 1578.

**CROSS REFERENCES**

2006 Main Volume Cross References

Delivery of proclamations and writs to sheriffs, 118.740

Penalty for misfeasance, malfeasance or willful neglect of duty, 61.170

Sheriff to publish notice of special election, 118.750

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↔314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

**RESEARCH REFERENCES**

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:26, Officials' Failure to Perform Duties.

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KRS § 119.145

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.145 Election officer's refusal to admit challenger**

Any election officer who refuses to permit any challenger of any political party having a ticket to be voted for at an election, who has been duly appointed and presents a duly attested certificate of appointment, to perform his duties as challenger, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

HISTORY: 1974 c 130, § 75, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.145, formerly compiled as 124.130, created by 1974 c 130, § 75, eff. 6-21-74; 1942 c 208, § 1; KS 1481a.

## CROSS REFERENCES

2006 Main Volume Cross References

Appointment of challengers and inspectors, 117.315

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪314.  
Westlaw Topic No. 144.  
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## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:26, Officials' Failure to Perform Duties.

KRS § 119.145, KY ST § 119.145

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KRS § 119.155

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.155 Preventing voter from casting ballot; interfering with election**

- (1) Any person who unlawfully prevents or attempts to prevent any voter from casting his ballot, or intimidates or attempts to intimidate any voter so as to prevent him from casting his ballot, or who unlawfully interferes with the election officers in the discharge of their duties, shall be guilty of a Class D felony.
- (2) Any person who, by himself or in aid of others, forcibly breaks up or prevents, or attempts to break up or prevent, or obstructs or attempts to obstruct, the lawful holding of an election, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 73, eff. 7-13-90; 1974 c 130, § 76

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.155, formerly compiled as 124.140, created by 1974 c 130, § 76, eff. 6-21-74; 1942 c 208, § 1; KS 1585a-4, 1588.

## CROSS REFERENCES

2006 Main Volume Cross References

Coercion of employee's vote prohibited, 121.310

Corrupt practices as grounds for contest, 120.015

Sentence of imprisonment for Class A misdemeanor, 532.090

Sentence of imprisonment for Class D felony, 532.060

## LIBRARY REFERENCES

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Elections ↪ 319, 320.

Westlaw Topic No. 144.

C.J.S. Elections §§ 330, 333, 334(2).

## RESEARCH REFERENCES

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KRS § 119.165

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.165 False personation of a voter; nonresident or unqualified person voting**

- (1) Any person who falsely personates a registered voter, and receives and casts a ballot by means of such personation, shall be guilty of a Class D felony. An attempt at such personation shall constitute a Class A misdemeanor.
- (2) Any person who, by means other than falsely personating a registered voter, votes at an election in this state when he is a resident of another state or country, or votes more than once at an election, or votes by use of the naturalization papers of another person, shall be guilty of a Class D felony. Any person who knowingly votes or attempts to vote in a precinct other than the one in which he resides shall be guilty of a Class A misdemeanor, unless by voting in a precinct in which he does not live he is enabled to vote in a race or on a matter in which he could not vote in his proper precinct in which case he shall be guilty of a Class D felony. Any person who lends or hires his or another's naturalization papers to be used for the purpose of voting shall be subject to the same penalty.
- (3) Any resident of this state who, by means other than falsely personating a registered voter, votes at a regular or special election before he has resided in this state thirty (30) days, or in the county and precinct where the election is held the time required by law, or before he has attained full age, or before he has become a citizen, shall be guilty of a Class B misdemeanor.
- (4) Any person who, by means other than falsely personating a registered voter, votes in a primary election knowing that he is not qualified as provided in KRS 116.055, shall be guilty of a violation.
- (5) Any person who applies for or receives a ballot at any voting place other than the one at which he is entitled to vote, under circumstances not constituting a violation of any of the provisions of subsections (1) to (4) of this section, shall be guilty of a Class A misdemeanor.

HISTORY: 1992 c 463, § 12, eff. 7-14-92; 1990 c 48, § 74; 1974 c 130, § 77

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.165, formerly compiled as 124.150, created by 1974 c 130, § 77, eff. 6-21-74; 1942 c 208, § 1; KS 1550-19, 1569, 1572, 1584, 1585.

## CROSS REFERENCES

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Determination of voter's residence, 116.035

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KRS § 119.175

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.175 Receipt of illegal vote or rejection of legal vote by election officer**

- (1) Except as provided in subsection (2) of this section, any officer of election who receives, assents to receive or records a vote at an election at a time or place known by him not to be the time and place lawfully appointed, or who knowingly receives the vote of any person other than a qualified voter, or refuses to receive the vote of a qualified voter, shall, for each offense, be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and shall forfeit any office he holds and be disqualified from ever holding any office.
- (2) Any judge of a primary election who knowingly receives a vote of an elector who is not qualified to vote in the primary election under KRS 116.055 shall be fined one hundred dollars (\$100) for each offense.

HISTORY: 1974 c 130, § 78, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

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**Note:** 119.175, formerly compiled as 124.160, created by 1974 c 130, § 78, eff. 6-21-74; 1942 c 208, § 1; KS 1550-19, 1583.

## CROSS REFERENCES

2006 Main Volume Cross References

Misconduct by election officer, 117.995

Precinct election officers, 117.045

## LIBRARY REFERENCES

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C.J.S. Elections § 327.

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KRS § 119.185

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**→ 119.185 Disobeying election officer's command**

Any person who willfully disobeys any lawful command of an election officer, given in the execution of his duty as such at an election, shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

HISTORY: 1974 c 130, § 79, eff. 6-21-74

HISTORICAL AND STATUTORY NOTES

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**Note:** 119.185, formerly compiled as 124.170, created by 1974 c 130, § 79, eff. 6-21-74; 1942 c 208, § 1; KS 1576.

CROSS REFERENCES

2006 Main Volume Cross References

Precinct election officers, 117.045

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Elections ↩ 309.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 355(2).

RESEARCH REFERENCES

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:30, Disobeying Election Officer's Command.

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KRS § 119.195

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**→119.195 Removing or tampering with ballots**

- (1) Any person who, during an election, knowingly and willfully removes or attempts to remove an official ballot from the election room, or has in his possession outside the election room any official ballot, either genuine or counterfeit, shall be guilty of a Class D felony.
- (2) Any voter who attempts to leave the election room with an official ballot in his possession shall at once be arrested on demand of either of the judges of election and shall be guilty of a violation, unless the act was done knowingly in which event he shall be guilty of a Class A misdemeanor.
- (3) Any person who takes or removes in any manner, feloniously or with the consent or permission of the custodian, any official ballot from any place where it may lawfully be, or knowingly and willfully has in his possession or custody any such official ballot, except as an officer or custodian under the law or while within the polling place for the purpose of voting, and any custodian or officer who permits any official ballot to be removed or carried away from the place where it may lawfully be by any person other than the officer or custodian whose duty it is to receive it, shall be guilty of a Class C felony.
- (4) Any election officer, or other person entrusted with the custody or control of any official ballot, either before or after it has been voted, who in any way marks, mutilates, or defaces any official ballot or places any distinguishing mark thereon, for the purpose of vitiating the official ballot, shall be guilty of a Class C felony.
- (5) Any person who unlawfully destroys or attempts to destroy any official ballot box used, or any official ballot deposited, at any election, or who unlawfully, by force, fraud, or other improper means, obtains or attempts to obtain possession of any ballot box or any official ballot therein deposited, while the voting at any election is going on or before the official ballots are duly taken out and counted according to law, shall be guilty of a Class D felony.
- (6) Any election officer who mutilates or tampers with any of the seals, or destroys or removes any official ballots required to be preserved, shall be guilty of a Class D felony.
- (7) Any county clerk who knowingly and willfully opens any ballot box and removes any official ballot therefrom, or removes, destroys, or tampers with a ballot box and official ballots left in his care and custody, or permits any other person to do so, during the period the boxes are required to remain locked in his office, shall be guilty of a Class D felony.
- (8) Any person who removes, mutilates, or destroys, or adds any new official ballots to, the regular official ballots that have been counted and prepared for preservation, or that have already been preserved, so that the result of the election in the precinct or county is changed, shall be guilty of a Class D felony.
- (9) Any person who tampers with or changes the official ballots, or opens the receptacles in which the official ballots are contained without the order of the court, after the ballots have been sent to the Franklin County

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KRS § 119.205

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Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.205 Making or receiving expenditures for vote, for withholding of vote, or for signing a petition to have public question on ballot; definition of "expenditure"; procedures for paying for transportation of voters; applicability of KRS 502.020**

- (1) Any person who makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (2) Any person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (3) Any person who makes or offers to make an expenditure to any person to sign a petition to have a public question placed on the ballot, or any person who solicits, accepts, or receives any such expenditure as payment or consideration to sign a petition to have a public question placed on the ballot, shall be guilty of a Class B misdemeanor.
- (4) For purposes of this section, "expenditure" means any of the following when intended as payment or consideration for voting or withholding a vote, voting for or against any candidate or public question, or signing a petition to have a public question placed on the ballot:
  - (a) A payment, distribution, loan, advance, deposit, or gift of money or anything of value; or
  - (b) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

"Expenditure," as used in this section, shall not include the distribution of materials bearing the name, likeness, or other identification of a candidate, political party, committee, or organization, or position on a public question and not intended as payment or consideration for voting or withholding a vote, voting for or against any candidate or public question, or signing a petition to have a public question placed on the ballot.
- (5) Any candidate or committee, or any person on his behalf, who pays any person, including campaign workers, for transporting voters to the polls on the day of the election, shall make all payments by check. All payments, regardless of amount, shall be reported to the Registry of Election Finance in the manner that the Registry shall provide by administrative regulation. Any person who knowingly violates any requirement of this subsection shall be guilty of a Class B misdemeanor.
- (6) In addition to the above provisions, a person may be convicted of a violation of this section pursuant to KRS 502.020.

HISTORY: 2000 c 53, § 1, eff. 7-14-00; 1991 1st ex s, c 5, § 1, eff. 2- 15-91

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KRS § 119.207

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**→119.207 Prohibition against paying compensation based upon number or characteristics of voters registered**

Any person who provides compensation or makes any such expenditure as payment or consideration for registering voters that is based upon the total number of voters a person registers or the total number of voters a person registers in a particular party, political group, political organization, or voters of independent status shall be guilty of a Class B misdemeanor.

HISTORY: 2006 c 107, § 1, eff. 3-30-06

KRS § 119.207, KY ST § 119.207

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KRS § 119.215

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▣ Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.215 Providing another with intoxicants on election day**

Any person who sells, loans, gives or furnishes intoxicating liquor to any person in this state on the day of any regular or primary election, under circumstances not constituting a violation of KRS 242.100, 244.290 or 244.480, shall be fined not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) for each offense.

HISTORY: 1974 c 130, § 82, eff. 6-21-74

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.215, formerly compiled as 124.200, created by 1974 c 130, § 82, eff. 6-21-74; 1942 c 208, § 1; KS 1575.

**CROSS REFERENCES**

2006 Main Volume Cross References

Corrupt practices as grounds for contest, 120.015

Sale or gift of liquor on election day, general assembly may regulate, Ky Const §154

**LIBRARY REFERENCES**

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Intoxicating Liquors ↪145.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors §§ 242, 256.

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:33, Providing Intoxicants for Another on Election Day.

**NOTES OF DECISIONS**

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KRS § 119.225

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Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.225 Denial of rights of inspectors by county board of elections**

Any member of a county board of elections who refuses to permit an inspector designated under KRS 117.275 and 117.315 to exercise free and full action in witnessing the count of the ballots, or interferes with the right of such an inspector to have a free and full opportunity to witness the count of the ballots, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 77, eff. 7-13-90; 1982 c 394, § 35; 1974 c 130, § 83

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.225, formerly compiled as 124.210, created by 1974 c 130, § 83, eff. 6-21-74; 1942 c 208, § 1; KS 1482.

**CROSS REFERENCES**

2006 Main Volume Cross References

Appointment of challengers and inspectors, 117.315

Counting and certification of votes, 117.275

Sentence of imprisonment for Class A misdemeanor, 532.090

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↪319.

Westlaw Topic No. 144.

C.J.S. Elections § 330.

**RESEARCH REFERENCES**

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**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:34, Interference With Election Inspectors.

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KRS § 119.235

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■ Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.235 Alteration, suppression, or destruction of stub book, return, or certificate of election**

Any person who willfully alters, obliterates, secretes, suppresses or destroys a stub book, return or certificate of election, and any officer who makes, aids in making or authorizes the making of any false or fraudulent stub book, certificate of election or election return, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 78, eff. 7-13-90; 1974 c 130, § 84

## HISTORICAL AND STATUTORY NOTES

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**Note:** 119.235, formerly compiled as 124.220, created by 1974 c 130, § 84, eff. 6-21-74; 1942 c 208, § 1; KS 1581.

## CROSS REFERENCES

2006 Main Volume Cross References

Issuance of certificates by state board of elections, 118A.190

Issuance of certificates of election by state board of elections, 118.425

Preservation of certificates and petitions of nomination, 118.385

Sentence of imprisonment for Class D felony, 532.060

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↻314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

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KRS § 119.245

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness  
 Title X. Elections  
 Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.245 Violation of law or failure to perform duty by member of board of elections**

Any member of the State Board of Elections or of a county board of elections who willfully and knowingly violates any provision of the statutes relating to his duties, or fails to execute faithfully any of the duties imposed upon him by law, for which no other penalty is provided, shall be guilty of a Class B misdemeanor.

HISTORY: 1990 c 48, § 79, eff. 7-13-90; 1982 c 394, § 36; 1974 c 130, § 85

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.245, formerly compiled as 124.230, created by 1974 c 130, § 85, eff. 6-21-74; 1942 c 208, § 1; KS 1596a-15.

**Note:** 119.245 contains provisions analogous to former 124.120 and 124.230, repealed by 1974 c 130, § 198, eff. 6-21-74.

**CROSS REFERENCES**

2006 Main Volume Cross References

County board of elections, 117.035

Failure of county board of elections to divide county into election precincts, 117.055

Failure to perform duties with respect to voter registration, 116.995

Misconduct by member of county board of elections, 117.995

Sentence of imprisonment for Class B misdemeanor, 532.090

State board of elections, 117.015

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↪314.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 327.

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KRS § 119.255

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

▣ Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.255 Intimidation of election officer or board of elections**

Any person who, by threat of violence or in any other manner, intimidates or attempts to intimidate the election officers, the State Board of Elections or a county board of elections in the performance of their duty and any persons who conspire together and go forth armed for the purpose of intimidating said officers, shall be guilty of a Class D felony.

HISTORY: 1990 c 48, § 80, eff. 7-13-90; 1982 c 394, § 37; 1974 c 130, § 86

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.255, formerly compiled as 124.240, created by 1974 c 130, § 86, eff. 6-21-74; 1942 c 208, § 1; KS 1596a-16.

CROSS REFERENCES

2006 Main Volume Cross References

County board of elections, 117.035

Executive director and assistant, staff, powers and duties, 117.025

Precinct election officers, 117.045

Sentence of imprisonment for Class D felony, 532.060

State board of elections, 117.015

LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 320.

Westlaw Topic No. 144.

C.J.S. Elections §§ 333, 334(2).

RESEARCH REFERENCES

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KRS § 119.265

**C**

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.265 Violation of duties for which no other penalty provided**

Any public officer who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, shall be guilty of a Class B misdemeanor.

HISTORY: 1990 c 48, § 81, eff. 7-13-90; 1974 c 130, § 87

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.265, formerly compiled as 124.250, created by 1974 c 130, § 87, eff. 6-21-74; 1942 c 208, § 1; KS 1577.

CROSS REFERENCES

2006 Main Volume Cross References

Misfeasance, malfeasance or willful neglect of duty, penalty, 61.170

Penalties for misconduct with respect to regulation of elections, 117.995

Sentence of imprisonment for Class B misdemeanor, 532.090

LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↩314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:36, Failure of Member of Board of Elections or Other Public Officer to Perform Duty.

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KRS § 119.275

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Title X. Elections

▣ Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.275 Advising or assisting violation of election laws**

Any person who counsels, advises, procures or aids in the commission of any of the offenses named in this chapter shall incur the penalty provided for committing such offense.

HISTORY: 1974 c 130, § 88, eff. 6-21-74

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.275, formerly compiled as 124.260, created by 1974 c 130, § 88, eff. 6-21-74; 1942 c 208, § 1; KS 1590.

**CROSS REFERENCES**

2006 Main Volume Cross References

Penalties for misconduct relating to regulation of elections, 117.995

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ↪ 309.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 324, 355(2).

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:38, Complicity in Election Law Violation.

KRS § 119.275, KY ST § 119.275

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KRS § 119.277

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 Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.277 Prohibitions against holding elective office**

Any person who shall have been convicted of any election law offense which is a Class A misdemeanor shall not be permitted to hold elective office for a period of five (5) years following the conviction. Any person who shall have been convicted of any election law offense which is a felony shall not be permitted to hold elective office until his civil rights have been restored by executive pardon.

HISTORY: 1988 c 341, § 17, eff. 7-15-88

CROSS REFERENCES

2006 Main Volume Cross References

Denial of right to have name placed on judicial ballot for violation of campaign finance regulations, 118A.080

Exclusion from office for bribery, fraud, intimidation, corrupt practices, Ky Const §151

Exclusion from office for crime, Ky Const §150

LIBRARY REFERENCES

2006 Main Volume Library References

Officers and Public Employees ↪31.  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees §§ 28 to 30.

KRS § 119.277, KY ST § 119.277

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KRS § 119.285

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→ 119.285 Irregularity or defect in conduct of election no defense**

Irregularities or defects in the mode of convening or conducting an election shall constitute no defense to a prosecution for a violation of the election laws.

HISTORY: 1974 c 130, § 89, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.285, formerly compiled as 124.270, created by 1974 c 130, § 89, eff. 6-21-74; 1942 c 208, § 1; KS 1591.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪ 321.

Westlaw Topic No. 144.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

## NOTES OF DECISIONS

**Evidence 1****Withholding candidate's name 2**

## 1. Evidence

This section does not warrant the court in holding that the testimony of a single witness, in support of the charge of receiving a bribe to vote, was corroborated by proof of general reputation of accused as a bribe taker, and having taken bribes for his vote at prior elections. (Annotation from former KRS 124.270.) *Romes v. Commonwealth* (Ky. 1915) 164 Ky. 334, 175 S.W. 669.

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KRS § 119.295

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→119.295 Applicability of penalties for regular elections to primaries and to elections for United States Senator**

- (1) Any act or deed denounced by the statutes concerning regular elections or concerning elections generally shall be an offense when committed in connection with a primary election held under KRS Chapter 118, and shall be punished in the same manner, and all the penalties for violation of the regular election laws shall apply with equal force to all similar violations of the provisions of the statutes relating to primary elections.
- (2) Penalties prescribed for offenses against the election laws in the election of other officers shall apply to elections for United States Senator.

HISTORY: 1974 c 130, § 90, eff. 6-21-74

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.295, formerly compiled as 124.280, created by 1974 c 130, § 90, eff. 6-21-74; 1942 c 208, § 1; KS 1546-3, 1550-35.

**CROSS REFERENCES**

2006 Main Volume Cross References

Election of United States senators, 118.465

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections ⇐309.

Westlaw Topic No. 144.

C.J.S. Elections §§ 324, 355(2).

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

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KRS § 119.305

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

▣ Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.305 Report by election officers of violations; arrest of offenders**

Election officers shall give information of all infractions of the election laws to the grand jury, Commonwealth's attorney, Attorney General and the Registry of Election Finance. The election officers shall cooperate in any investigation or prosecution of election law violations. When there is reason to fear that an offender will escape out of the county before indictment, any election officer may procure his immediate apprehension.

HISTORY: 1988 c 341, § 38, eff. 7-15-88; 1974 c 130, § 91

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.305, formerly compiled as 124.290, created by 1974 c 130, § 91, eff. 6-21-74; 1942 c 208, § 1; KS 1592.

CROSS REFERENCES

2006 Main Volume Cross References

Attorney general's jurisdiction to investigate and prosecute election law violations, 15.242

Burden of proof and order of proceedings in disciplinary proceedings, SCR 3.330

Burden of proof in civil cases, CR 43.01

Burden of proof in criminal cases, defenses, 500.070

Enforcement of election laws by attorney general, 15.243

LIBRARY REFERENCES

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Elections k324.1.

Westlaw Topic No. 144.

KRS § 119.305, KY ST § 119.305

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KRS § 119.315

Baldwin's Kentucky Revised Statutes Annotated Currentness  
Title X. Elections  
Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.315 Grand jury may compel testimony as to violation of election laws**

Except as provided in KRS 119.325, any person who refuses, when summoned, to testify on oath before a grand jury as to any knowledge he may possess concerning any violation of law in relation to elections in the county during the preceding eighteen (18) months shall be imprisoned until he submits, and be fined not less than ten dollars (\$10) nor more than thirty dollars (\$30) by the court, and a like sum for each daily repetition of the contempt.

HISTORY: 1974 c 130, § 92, eff. 6-21-74

HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

Note: 119.315, formerly compiled as 124.300, created by 1974 c 130, § 92, eff. 6-21-74; 1942 c 208, § 1; KS 1593.

CROSS REFERENCES

2006 Main Volume Cross References

- Grand jury instructions, RCr 5.02
- Grand jury investigation, compelling testimony, RCr 5.12
- Self-incrimination, US Const Am 5

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- Elections ↪326.
- Westlaw Topic No. 144.

KRS § 119.315, KY ST § 119.315

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KRS § 119.325

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Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.325 Refusal to produce evidence of corrupt practices when summoned by grand jury a Class A misdemeanor**

Any person having the possession of any books, correspondence or papers of a corporation that may show or tend to show any violation of the provisions of KRS 121.025, or of KRS 121.045 or 121.055, or of subsection (1) of KRS 121.310, who refuses, when summoned by a grand jury, to produce such books, correspondence or papers, or to appear and testify concerning them or to give any other evidence material to the matter under investigation, shall be guilty of a Class A misdemeanor.

HISTORY: 1990 c 48, § 82, eff. 7-13-90; 1974 c 130, § 93

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.325, formerly compiled as 124.310, created by 1974 c 130, § 93, eff. 6-21-74; 1942 c 208, § 1; KS 1565b-21.

## CROSS REFERENCES

2006 Main Volume Cross References

Attendance of witnesses at grand jury proceeding, RCr 5.06

Candidates prohibited from making expenditure, loan, promise, agreement or contract as to action when elected, in consideration for vote, 121.055

Coercion of employee's vote prohibited, 121.310

Compelling testimony from witness before grand jury, RCr 5.12

Contributions to certain candidates by individuals prohibited, 121.045

Corporate contributions to candidates prohibited, 121.025

Grand jury investigation, RCr 5.02

Self-incrimination, US Const Am 5

Sentence of imprisonment for Class A misdemeanor, 532.090

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KRS § 119.335

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.335 Evidence required to support conviction for violation of election laws**

No person shall be convicted of a violation of any of the statutes relating to elections upon the testimony of only one (1) witness, unless sustained by strong corroborating circumstances.

HISTORY: 1974 c 130, § 94, eff. 6-21-74

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.335, formerly compiled as 124.320, created by 1974 c 130, § 94, eff. 6-21-74; 1942 c 208, § 1; KS 1594.

## LIBRARY REFERENCES

2006 Main Volume Library References

Elections ↪329.

Westlaw Topic No. 144.

C.J.S. Elections §§ 349 to 351.

## RESEARCH REFERENCES

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

## NOTES OF DECISIONS

**In general 1****Circumstantial evidence 2****Corroboration 3****Sale of liquor 4**

## 1. In general

Evidence not sufficient to convict for bribery. (Annotation from former KRS 124.320.) *Benge v. Com.* (Ky. 1924)

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KRS § 119.345

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Baldwin's Kentucky Revised Statutes Annotated Currentness

Title X. Elections

▣ Chapter 119. Election Offenses and Prosecutions (Refs &amp; Annos)

**→119.345 Witness not exempted from giving incriminating testimony; immunity except from perjury charge**

- (1) At the discretion of the prosecuting attorney, in any prosecution under the election laws it shall be no exemption for a witness that his information may criminate himself, and no such information given by a witness shall be used against him in any prosecution, except for perjury, and if used on behalf of the Commonwealth he shall stand discharged from all penalties for any violation of the election laws so necessarily disclosed in the information he so discloses as tending to convict the accused.
- (2) The statement of any person testifying in any case pending under the provisions of KRS 121.025, 121.045, 121.055, or subsection (1) of KRS 121.310 shall not be used against him in any prosecution or civil proceeding.

HISTORY: 1988 c 341, § 39, eff. 7-15-88; 1974 c 130, § 95

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume Historical and Statutory Notes

**Note:** 119.345, formerly compiled as 124.330, created by 1974 c 130, § 95, eff. 6-21-74; 1942 c 208, § 1; KS 1565b-20, 1594.

## CROSS REFERENCES

2006 Main Volume Cross References

Self-incrimination, US Const Am 5

## LIBRARY REFERENCES

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Elections 326.  
Westlaw Topic No. 144.

## NOTES OF DECISIONS

**Immunity 1**  
**Testimony required 2**

1. Immunity

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KRS § 119.355

**C**

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 Title X. Elections  
 Chapter 119. Election Offenses and Prosecutions (Refs & Annos)

**→ 119.355 Limitation of prosecutions**

No prosecution shall be had under the election laws where the penalty is less than confinement in the penitentiary unless the prosecution is commenced within two (2) years from the time of the commission of the offense.

HISTORY: 1974 c 130, § 96, eff. 6-21-74

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume Historical and Statutory Notes

**Note:** 119.355, formerly compiled as 124.340, created by 1974 c 130, § 96, eff. 6-21-74; 1942 c 208, § 1; KS 1595.

**LIBRARY REFERENCES**

2006 Main Volume Library References

Elections k324.1.  
 Westlaw Topic No. 144.

**RESEARCH REFERENCES**

2006 Main Volume Research References

**Treatises and Practice Aids**

Abramson, Kentucky Practice, Criminal Practice and Procedure § 13:1, Statutory Limitations on Charging Defendant.

Abramson, Kentucky Practice, Substantive Criminal Law § 14:20, In General.

**NOTES OF DECISIONS**

**Misdemeanors 2**  
**Procedural issues 1**

1. Procedural issues

An indictment for receiving a bribe under KRS 124.150 (KS 1585) should show on its face that the offense was committed within two years; this may be done by giving the date of the election at which the bribe was received.

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I.C.A. § 39A.1

Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→39A.1. Title and purpose—election officials defined**

1. This chapter may be cited and referred to as the "Election Misconduct and Penalties Act".
2. The purpose of this chapter is to identify actions which threaten the integrity of the election process and to impose significant sanctions upon persons who intentionally commit those acts. It is the intent of the general assembly that offenses with the greatest potential to affect the election process be vigorously prosecuted and strong punishment meted out through the imposition of felony sanctions which, as a consequence, remove the voting rights of the offenders. Other offenses are still considered serious, but based on the factual context in which they arise, they may not rise to the level of offenses to which felony penalties attach. The general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction. In such instances, administrative notice from the state or county commissioner of elections is sufficient. Mandates or proscriptions in chapters 39 through 53 which are not specifically included in this chapter shall be considered to be directive only, without criminal sanction.
3. For the purposes of this chapter, "election officials" include the state commissioner, the county commissioner, employees of the state commissioner and county commissioner who are responsible for carrying out functions or duties under chapters 39 through 53, and precinct election officials appointed pursuant to sections 49.12, 49.14, 49.18, and 53.23.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 1.

I. C. A. § 39A.1, IA ST § 39A.1

Current through Acts of 2006 Reg. Sess. &amp; 1st Ex. Sess.

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I.C.A. § 39A.2



Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→39A.2. Election misconduct in the first degree**

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

a. Registration fraud. Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

b. Vote fraud.

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter's right to vote.

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts to deprive or defraud the citizens of this state of a fair and impartially conducted election process.

c. Duress. Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under chapters 39 through 53.

d. Bribery.

(1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on

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I.C.A. § 39A.2

some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).

e. Conspiracy. Conspires with or acts as an accessory with another to commit an act in violation of paragraphs "a" through "d".

2. Election misconduct in the first degree is a class "D" felony.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 2.

I. C. A. § 39A.2, IA ST § 39A.2

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I.C.A. § 39A.3

Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→39A.3. Election misconduct in the second degree**

1. A person commits the crime of election misconduct in the second degree if the person willfully commits any of the following acts:

a. Interference with validity of election.

(1) Possesses an official ballot outside of the voting room unless the person is an election official or other person authorized by law to possess such a ballot.

(2) Makes or possesses a counterfeit of an official election ballot.

(3) Solicits or encourages a person to vote in an election knowing that person is not qualified to vote in the election.

b. Actions by election official. As an election official:

(1) Refuses to register a person who is entitled to register to vote under chapter 48A.

(2) Accepts a fee from an applicant applying for registration.

(3) While the polls are open, opens a ballot received from a voter, except as permitted by law.

(4) Marks a ballot by folding or otherwise so as to be able to recognize it.

(5) Attempts to learn how a voter marked a ballot.

(6) Causes a voter to cast a vote contrary to the voter's intention.

(7) Changes a ballot, or in any way causes a vote to be recorded contrary to the intention of the person casting that vote.

(8) Allows a person to do any of the acts proscribed by subparagraphs (1) through (7).

2. Election misconduct in the second degree is an aggravated misdemeanor.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 3.

I. C. A. § 39A.3, IA ST § 39A.3

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I.C.A. § 39A.4



Iowa Code Annotated Currentness

Title II. Elections and Official Duties

§ Subtitle 1. Elections

§ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→ 39A.4. Election misconduct in the third degree**

1. A person commits the crime of election misconduct in the third degree if the person willfully commits any of the following acts:

a. Election day acts. Any of the following on election day:

(1) Loitering, congregating, electioneering, posting signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of a polling place or within three hundred feet of an outside door of a building affording access to a room where the polls are held, or of an outside door of a building affording access to a hallway, corridor, stairway, or other means of reaching the room where the polls are held. This subparagraph does not apply to the posting of signs on private property not a polling place, except that the placement of a sign that is more than ninety square inches in size on a motor vehicle, trailer, or semitrailer, or its attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place is prohibited.

(2) Interrupting, hindering, or opposing a voter while in or approaching the polling place for the purpose of voting.

(3) As a voter, submitting a false statement as to the voter's ability to mark a ballot.

(4) Interfering or attempting to interfere with a voter when the voter is inside the enclosed voting space, or when the voter is marking a ballot.

(5) Endeavoring to induce a voter to show how the voter marks or has marked a ballot.

(6) Marking, or causing in any manner to be marked, on a ballot, any character for the purpose of identifying such ballot.

b. Actions by election official. As an election official:

(1) Serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, while serving as a precinct election official at the polls.

(2) Failing to perform duties prescribed by chapters 39 through 53, or performing those duties in such a way as to hinder the object of the law.

(3) Disclosing the manner in which a person's ballot has been voted to anyone except as ordered by a court.

(4) Failing to carry out a duty with regard to access under chapter 22 to a public record that relates to an election or voter registration.

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## I.C.A. § 39A.4

- (5) Furnishing a voter with a ballot other than the proper ballot to be used at an election.
- (6) Making or consenting to a false entry on the list of voters or poll books.
- (7) Placing or permitting another election official to place anything other than a ballot into a ballot box as provided in section 49.85, or permitting a person other than an election official to place anything into a ballot box.
- (8) Taking or permitting to be taken out of a ballot box a ballot deposited in the ballot box, except in the manner prescribed by law.
- (9) Destroying or altering a ballot that has been given to a voter.
- (10) Permitting a person to vote in a manner prohibited by law.
- (11) Refusing or rejecting the vote of a voter qualified to vote.
- (12) Wrongfully acting or refusing to act for the purpose of avoiding an election, or of rendering invalid a ballot cast from a precinct or other voting district.
- (13) Having been deputized to carry the poll books of an election to the place where they are to be canvassed, failing to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

## c. Miscellaneous offenses.

- (1) As a party committee member or a primary election officer or public officer upon whom a duty is imposed by chapter 43 or by a statute applicable to chapter 43, neglecting to perform any such duty, or performing any such duty in such a way as to hinder the object of the statute, or by disclosing to anyone, except as may be ordered by a court, the manner in which a ballot may have been voted.
- (2) As a person who is designated pursuant to section 43.4 to report the results of a precinct caucus as it relates to the selection and reporting of delegates selected as part of the presidential nominating process or who is designated pursuant to section 43.4 to tabulate and report the number of persons attending the caucus favoring each presidential candidate, failing to perform those duties, falsifying the information, or omitting information required to be reported under section 43.4.
- (3) Making a false answer under chapter 43 relative to a person's qualifications and party affiliations.
- (4) Paying, offering to pay, or receiving compensation for voter registration assistance in violation of section 48A.25.
- (5) Using voter registration information in violation of section 48A.39.
- (6) As a candidate, making a promise to name or appoint another person to a position or to secure a position for another person in violation of section 49.120.
- (7) Soliciting the use of influence from a candidate in violation of section 49.121.
- (8) As a public official or employee, or a person acting under color of a public official or employee, knowingly requiring a public employee to act in connection with an absentee ballot in violation of section 53.7.
- (9) As a person designated by the county commissioner of elections or by the voter casting an absentee ballot,

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failing to return an absentee ballot in violation of section 53.35A.

(10) As an incumbent officeholder of, or a candidate for, an office being voted for at the election in progress, serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6.

(11) Returning a voted absentee ballot, by mail or in person, to the commissioner's office and the person returning the ballot is not the voter, an absentee ballot courier, a special precinct election official designated pursuant to section 53.22, subsection 1, or the designee of a voter described in section 53.22, subsection 5.

(12) Making a false or untrue statement reporting that a voted absentee ballot was returned to the commissioner's office, by mail or in person, by a person other than the voter, an absentee ballot courier, a special precinct election official designated pursuant to section 53.22, subsection 1, or the designee of a voter described in section 53.22, subsection 5.

2. Election misconduct in the third degree is a serious misdemeanor.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 4. Amended by Acts 2004 (80 G.A.) ch. 1083, § 1, eff. April 16, 2004.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

2004 Legislation

The 2004 amendment, in subsec. 1, par. c, added subpar. (11) and subpar. (12).

Acts 2004 (80 G.A.) ch. 1083, § 37, provides:

"Sec. 37. Immediate effective date. This Act, being deemed of immediate importance, takes effect upon enactment and applies to elections held on or after September 15, 2004."

I. C. A. § 39A.4, IA ST § 39A.4

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▷

Iowa Code Annotated Currentness

Title II. Elections and Official Duties

▣ Subtitle 1. Elections

▣ Chapter 39A. Election Misconduct (Refs &amp; Annos)

**→ 39A.5. Election misconduct in the fourth degree**

1. A person commits the crime of election misconduct in the fourth degree if the person willfully commits any of the following acts:

## a. Election day acts.

(1) As an employer, denying an employee the privilege conferred by section 49.109, or subjecting an employee to a penalty or reduction of wages because of the exercise of that privilege.

(2) Failing or refusing to comply with an order or command of an election official made pursuant to chapter 49 for which another penalty is not provided.

(3) Circulating, communicating, or attempting to circulate or communicate information with reference to the result of the counted ballots or making a compilation of vote subtotals before the polls are closed in violation of section 51.11, 52.40, or 53.23.

(4) Destroying, defacing, tearing down, or removing a list of candidates, card of instruction, or sample ballot posted as provided by law prior to the closing of the polls.

(5) Removing or destroying the supplies or articles furnished for the purpose of enabling voters to prepare their ballots.

(6) Violating or attempting to violate any of the provisions or requirements of chapter 49 to which another penalty does not apply.

## b. Miscellaneous offenses.

(1) As a public employee, acting in connection with an absentee ballot in violation of section 53.7.

(2) Neglecting or refusing to return an absentee ballot in violation of section 53.35, or violating any other provision of chapter 53 for which another penalty is not provided.

(3) Filing a challenge containing false information under section 48A.14.

2. Election misconduct in the fourth degree is a simple misdemeanor.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 5.

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I.C.A. § 39A.6



Iowa Code Annotated Currentness  
Title II. Elections and Official Duties  
    ▣ Subtitle 1. Elections  
        ▣ Chapter 39A. Election Misconduct (Refs & Annos)

**→39A.6. Technical infractions--notice**

If the state commissioner or county commissioner becomes aware of an apparent technical violation of a provision of chapters 39 through 53, the state commissioner or county commissioner may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures. This notice is not a final determination of facts or law in the matter, and does not entitle a person to a proceeding under chapter 17A.

CREDIT(S)

Added by Acts 2002 (79 G.A.) ch. 1071, § 6.

I. C. A. § 39A.6, IA ST § 39A.6

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**25-2407. Corrupt political advertising; penalty.**

Corrupt political advertising is:

(a) Publishing or causing to be published in a newspaper or other periodical any paid matter which is designed or tends to aid, injure or defeat any candidate for nomination or election to public office, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor; or

(b) broadcasting or causing to be broadcast by any radio or television station any paid matter which is designed or tends to aid, injure or defeat any candidate for nomination or election to public office, unless such matter is followed by a statement that the preceding was an advertisement together with the name of the chairman of the political or other organization sponsoring the same or the name of the person who is responsible therefor; or

(c) publishing or causing to be published in a newspaper or other periodical any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor; or

(d) broadcasting or causing to be broadcast by any radio or television station any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election, unless such matter is followed by the statement that the preceding was an advertisement together with the name of the chairman of the political or other organization sponsoring the same or the name of the person who is responsible therefor.

Corrupt political advertising is a class C misdemeanor.

**History:** L. 1973, ch. 173, § 1; Feb. 23.

## SOURCE OR PRIOR LAWS

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## CROSS REFERENCES TO RELATED SECTIONS

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KANSAS STATUTES ANNOTATED  
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**25-2408. Definitions.**

As used in this act, unless the context otherwise requires: (a) "Election" means any primary, general or special election of national, state, county, township, school or city officers or officers of any other subdivision of the state, or any question submitted election held at any time whether the same be upon a constitutional amendment, authority to issue bonds by the state or any subdivision thereof or any other special question whatsoever.

(b) Words and phrases defined in article 25 of chapter 25 of Kansas Statutes Annotated shall have the same meaning when used in this act as is ascribed thereto in said article.

**History:** L. 1974, ch. 157, § 1; July 1.

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**KANSAS STATUTES ANNOTATED  
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25-2409. Election bribery.**

Election bribery is conferring, offering or agreeing to confer, or soliciting, accepting or agreeing to accept any benefit as consideration to or from any person either to vote or withhold any person's vote, or to vote for or against any candidate or question submitted at any public election.

Election bribery is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 3; L. 1993, ch. 291, § 200; July 1.

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C.J.S. Elections § 332.

K. S. A. § 25-2409, KS ST § 25-2409

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**25-2410. Bribery to induce signing of nomination papers.**

Bribery to induce signing of nomination papers is knowingly: (a) Offering any benefit, property or thing of value to any person to induce him to sign any nomination paper; or

(b) accepting any benefit, property or thing of value, as consideration for signing any nomination paper.

Bribery to induce signing of nomination papers is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 4; July 1.

K. S. A. § 25-2410, KS ST § 25-2410

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**25-2411. Election perjury.**

Election perjury is intentionally and knowingly falsely swearing, affirming, declaring or subscribing to any of the following: (a) Statements in answer to questions put to a person who has been challenged as unqualified to vote.

(b) Statements in answer to questions put to a witness concerning the qualifications of any person to vote.

(c) Statements contained in any affidavit which is prescribed by chapter 25 of the Kansas Statutes Annotated or any other election law of the state, or which is prescribed in any manner by the secretary of state or any county election officer under the election laws of this state.

(d) Statements in answer to questions put by a county election officer or deputy county election officer relating to application for voter registration of any person.

(e) Statements in answer to questions put by an election board member to a person asking for voter assistance because of age, visual handicap, lack of proficiency in reading the English language or physical disability.

(f) Statements of any witness at an election contest.

Election perjury is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 5; L. 1976, ch. 188, § 1; L. 1993, ch. 291, § 201; July 1.

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Perjury ↪ 1.

C.J.S. Perjury §§ 2 to 8, 21.

K. S. A. § 25-2411, KS ST § 25-2411

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**KANSAS STATUTES ANNOTATED  
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25-2412. Election forgery.**

Election forgery is: (a) Knowingly and with intent to induce official action, signing or otherwise affixing any name other than one's own name to a certificate of nomination, nomination paper or any petition under the election laws of this state;

(b) marking any other person's ballot without such person's consent; or

(c) marking any other person's ballot contrary to the directions of such person.

Election forgery is a severity level 8, nonperson felony.

**History:** L. 1974, ch. 157, § 6; L. 1980, ch. 113, § 1; L. 1993, ch. 291, § 202; July 1.

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Forgery ↪ 1.

C.J.S. Forgery § 1.

**CASE ANNOTATIONS**

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. *Sawyer v. Chapman*, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2412, KS ST § 25-2412

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**25-2413. Disorderly election conduct.**

Disorderly election conduct is willfully: (a) Disturbing the peace in or about any voting place on election day;

(b) leaving or attempting to leave a voting place in possession of any ballot, except as is specifically permitted by law;

(c) approaching or remaining closer than three feet to any voting booth, voting machine or table being used by an election board except as admitted for the purpose of voting or by authority of the supervising judge;

(d) interrupting, hindering or obstructing any person approaching any voting place for the purpose of voting;

(e) engaging in any of the following activities within 250 feet from the entrance of a polling place during the hours the polls are open on election day:

(1) solicitation of contributions; or

(2) conduct of advisory elections other than those specifically authorized by law, including the exercise of home rule power, to be conducted by a county election officer.

Disorderly election conduct is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 7; L. 1985, ch. 118, § 11; July 1.

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Elections ↪ 309.

C.J.S. Elections §§ 324, 334.

## ATTORNEY GENERAL'S OPINIONS

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Disorderly election conduct; advisory elections; assistance of county election officer; home rule. 94-106.

K. S. A. § 25-2413, KS ST § 25-2413

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**25-2414. Possessing false or forged election supplies.**

Possessing false or forged election supplies is possessing any falsely made, altered, forged or counterfeit poll book, tally lists or election returns of any election in this state with the intent to hinder or prevent a fair election.

Possessing false or forged election supplies is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 8; L. 1993, ch. 291, § 203; July 1.

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**25-2415. Intimidation of voters.**

(a) Intimidation of voters is: (1) intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such person to vote for, or not to vote for, any candidate for any office or question submitted at any election; or

(2) mailing, publishing, broadcasting, telephoning or transmitting by any means false information intended to keep one or more voters from casting a ballot or applying for or returning an advance voting ballot.

(b) Intimidation of voters is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 9; L. 2001, ch. 125, § 2; April 26.

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1993 Main Volume RESEARCH AND PRACTICE AIDS

Elections ↔ 320.

C.J.S. Elections § 333.

LAW REVIEW AND BAR JOURNAL REFERENCES:

2005 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:

'2001 Legislative Wrap-Up,' Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

K. S. A. § 25-2415, KS ST § 25-2415

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**25-2416. Voting without being qualified.**

Voting without being qualified is knowingly and willfully: (a) Voting or attempting to vote at any election when not a lawfully registered voter.

(b) Voting or offering to vote more than once at the same election.

(c) Inducing or aiding any person to vote more than once at the same election.

Voting without being qualified is a class A misdemeanor.

**History:** L. 1974, ch. 157, § 10; July 1.

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1993 Main Volume RESEARCH AND PRACTICE AIDS

Elections ⇄ 313.

C.J.S. Elections § 325.

**CASE ANNOTATIONS**

1993 Main Volume CASE ANNOTATIONS

1. Cited; law on voting absentee ballot for another (25-1124) applied. *Lambeth v. Levens*, 237 K. 614, 618, 702 P.2d 320 (1985).

2. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. *Sawyer v. Chapman*, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2416, KS ST § 25-2416

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**25-2417. Bribery of an election official.**

Bribery of an election official is conferring or offering or agreeing to confer any benefit, property or thing of value upon an election official with intent to influence the election official to perform the election official's duties improperly.

Bribery of an election official is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 11; L. 1993, ch. 291, § 204; July 1.

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C.J.S. Elections § 332.

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**25-2418. Bribe acceptance by an election official.**

Bribe acceptance by an election official is the acceptance by an election official of any benefit, property or thing of value in consideration for improper performance of election duties.

Bribe acceptance by an election official is a severity level 7, nonperson felony.

**History:** L. 1974, ch. 157, § 12; L. 1993, ch. 291, § 205; July 1.

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**25-2419. Misconduct of an election officer.**

Misconduct of an election officer is, while being charged with any election duty: (a) Being grossly neglectful with respect thereto.

(b) Furnishing a voter with a ballot and informing such voter that any of its contents are different from that which appear thereon with intent to induce such voter to vote contrary to such voter's inclinations.

(c) Changing the ballot of a voter.

(d) Willfully permitting any person to testify as a witness or make an affidavit contrary to law.

(e) Preventing a qualified elector from voting.

(f) Refusing to receive the vote of a qualified elector when duly offered.

Misconduct of an election officer is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 13; July 1.

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Elections ↪ 314.

C.J.S. Elections § 327.

## CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. *Sawyer v. Chapman*, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2419, KS ST § 25-2419

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**25-2420. Election fraud by an election officer.**

Election fraud by an election officer is, while being charged with any election duty, and with intent to hinder, prevent or defeat a fair election: (a) Receiving any vote by any person who is not a registered voter or otherwise qualified to vote.

(b) Receiving any vote offered by any person who shall have voted previously at the same election.

(c) Possessing any falsely made, altered, forged or counterfeit poll books, registration books, party affiliation lists, election abstracts or returns or any other election papers.

(d) Receiving, canvassing, counting or tallying any ballots, votes or election returns which are fraudulent, forged, counterfeited or illegal.

(e) Issuing, granting, mailing or delivering any false, fraudulent or illegal certificate of nomination or certificate of election.

(f) Declaring or otherwise proclaiming any false election result.

(g) Declaring or otherwise proclaiming any election result based upon fraudulent, fictitious or illegal votes.

(h) Entering or writing upon any poll book, registration book or party affiliation list the name of any person not qualified to vote.

(i) Entering or writing upon any poll book, registration book or party affiliation list the name of any person who has not voted when in fact such person has not voted.

Election fraud by an election officer is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 14; L. 1993, ch. 291, § 206; July 1.

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C.J.S. Elections § 327.

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KANSAS STATUTES ANNOTATED  
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**25-2421. Election suppression.**

Election suppression is knowingly: (a) Suppressing any certificate of nomination, nomination papers, petition for nomination or any part thereof which have been duly filed.

(b) Being in possession of any certificate of nomination, nomination papers or petition for candidacy entitled to be filed under any of the election laws of this state and suppressing, neglecting or failing to cause the same to be filed at the proper time in the proper office.

Election suppression is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 15; L. 1993, ch. 291, § 207; July 1.

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**25-2421a. Voter registration suppression.**

(a) Voter registration suppression is knowingly: (1) Destroying any application for voter registration signed by a person pursuant to K.S.A. 25-2309, and amendments thereto, (2) obstructing the delivery of any such signed application to the county election officer or the chief state election official, or (3) failing to deliver any such application to the appropriate county election officer or the chief state election official as required by law.

(b) Voter registration suppression is a severity level 10, nonperson felony.

**History:** L. 2001, ch. 125, § 1; April 26.

K. S. A. § 25-2421a, KS ST § 25-2421a

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**25-2422. Unauthorized voting disclosure.**

Unauthorized voting disclosure is, while being charged with any election duty, intentionally: (a) Disclosing or exposing the contents of any ballot or the manner in which the ballot has been voted, except as ordered by a court of competent jurisdiction.

(b) Endeavoring to induce any voter to show how the voter marks or has marked the voter's ballot.

Unauthorized voting disclosure is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 16; L. 1993, ch. 291, § 208; July 1.

LAW REVIEW AND BAR JOURNAL REFERENCES:

2005 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:

'Kansas Sunshine Law: How Bright Does It Shine Now? The Kansas Open Meetings and Open Records Acts,' Theresa 'Terry' Marcel, 72 J.K.B.A. No. 5, 28 (2003).

ATTORNEY GENERAL'S OPINIONS

1993 Main Volume ATTORNEY GENERAL'S OPINIONS

Open public meetings; secret ballots; voting procedure to elect members of the state board of agriculture. 86-176.

K. S. A. § 25-2422, KS ST § 25-2422

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**25-2423. Election tampering.**

Election tampering is, while being charged with no election duty, making or changing any election record.

Election tampering is a severity level 8, nonperson felony.

**History:** L. 1974, ch. 157, § 17; L. 1993, ch. 291, § 209; July 1.

K. S. A. § 25-2423, KS ST § 25-2423

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**25-2424. False impersonation as party officer.**

False impersonation as party officer is willfully and falsely representing oneself to be an officer of any political party organization or committeeman or committeewoman thereof with the intent to deceive any person or to influence in any way the outcome of any election.

False impersonation as party officer is a class A misdemeanor.

**History:** L. 1974, ch. 157, § 18; July 1.

K. S. A. § 25-2424, KS ST § 25-2424

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**25-2425. Voting machine fraud.**

Voting machine fraud is: (a) Being in unlawful or unauthorized possession of a voting machine key.

(b) Intentionally tampering with, altering, disarranging, defacing, impairing or destroying any voting machine, automatic ballot, voting machine label or register or record made by a voting machine.

Voting machine fraud is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 19; L. 1993, ch. 291, § 210; July 1.

K. S. A. § 25-2425, KS ST § 25-2425

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**25-2426. Printing and circulating imitation ballots.**

Printing and circulating imitation ballots is knowingly printing and circulating sample or imitation ballots except the official sample ballot furnished by the county election officer.

Printing and circulating imitation ballots is a severity level 10, nonperson felony.

**History:** L. 1974, ch. 157, § 20; L. 1993, ch. 291, § 211; July 1.

K. S. A. § 25-2426, KS ST § 25-2426

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**25-2427. Marking ballots to identify.**

Marking ballots to identify is knowingly, in any manner or fashion marking, folding or clipping any ballot so that such ballot may be distinguished from other ballots.

Marking ballot to identify is a class A misdemeanor.

**History:** L. 1974, ch. 157, § 21; July 1.

ATTORNEY GENERAL'S OPINIONS

2005 Pocket Part ATTORNEY GENERAL'S OPINIONS

Advance voting ballot, death of voter prior to canvassing of ballot. 2002-15.

K. S. A. § 25-2427, KS ST § 25-2427

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**25-2428. Destruction of election supplies.**

Destruction of election supplies is intentionally destroying or defacing any list of candidates posted in accordance with law, card of instruction, sample ballot or any election supplies.

Destruction of election supplies is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 22; L. 1993, ch. 291, § 212; July 1.

K. S. A. § 25-2428, KS ST § 25-2428

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**25-2429. Destruction of election papers.**

Destruction of election papers is intentionally destroying any certificate of nomination or nomination papers or any letter of withdrawal of a candidate.

Destruction of election papers is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 23; L. 1993, ch. 291, § 213; July 1.

K. S. A. § 25-2429, KS ST § 25-2429

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**KANSAS STATUTES ANNOTATED  
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25-2430. Electioneering.**

(a) Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicate support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof. Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.

(b) As used in this section, "advance voting site" means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto.

(c) Electioneering is a class C misdemeanor.

**History:** L. 1974, ch. 157, § 24; L. 2001, ch. 125, § 3; April 26.

**LAW REVIEW AND BAR JOURNAL REFERENCES:**

**2005 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:**

'2001 Legislative Wrap-Up,' Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

**ATTORNEY GENERAL'S OPINIONS**

**1993 Main Volume ATTORNEY GENERAL'S OPINIONS**

Mail ballot election act; voting by electors; statute inapplicable. 85-80.

K. S. A. § 25-2430, KS ST § 25-2430

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**25-2431. False impersonation of a voter.**

False impersonation of a voter is representing oneself as another and thereas voting or attempting to vote.

False impersonation of a voter is a severity level 9, nonperson felony.

**History:** L. 1974, ch. 157, § 25; L. 1993, ch. 291, § 214; July 1.

CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. Sawyer v. Chapman, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2431, KS ST § 25-2431

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**25-2432. Forfeiture of office or employment upon conviction.**

Upon final conviction of any person of any offense specified in this act, such person shall forfeit any public office or public employment which he may hold in addition to any other penalties imposed for such offense.

**History:** L. 1974, ch. 157, § 26; July 1.

RESEARCH AND PRACTICE AIDS

1993 Main Volume RESEARCH AND PRACTICE AIDS

Officers and Public Employees ↪ 31.

C.J.S. Officers and Public Employees § 22.

CASE ANNOTATIONS

1993 Main Volume CASE ANNOTATIONS

1. Cited; constitutionality of mail ballot election act (25-431 et seq.) examined and upheld. *Sawyer v. Chapman*, 240 K. 409, 414, 415, 729 P.2d 1220 (1986).

K. S. A. § 25-2432, KS ST § 25-2432

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**→3-14-1-1 Defacing, falsifying, or destroying declarations, requests, petitions, or certificates**

Sec. 1. A person who knowingly:

- (1) falsely makes or fraudulently defaces or destroys a declaration of candidacy, request for ballot placement under IC 3-8-3, certificate or petition of nomination, recount petition or cross-petition, contest petition, or certificate of candidate selection, or a part of the declaration, request, petition, or certificate;
- (2) files a declaration of candidacy, request for ballot placement under IC 3-8-3, certificate or petition of nomination, recount petition or cross-petition, contest petition, or certificate of candidate selection, knowing any part thereof to be falsely made;
- (3) refuses to execute a certificate of nomination or candidate selection when required by this title to do so and knowing that the candidate has been nominated or selected;
- (4) if the document is listed in subdivision (1), refuses to:
  - (A) receive the document; or
  - (B) record the date and time the document was received;
 when presented in accordance with this title; or
- (5) suppresses a declaration of candidacy, request for ballot placement under IC 3-8-3, petition or certificate of nomination, recount petition or cross-petition, contest petition, or certificate of candidate selection, that has been duly filed, or any part of the declaration, request, petition, or certificate;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.204.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

P.L.10-1988, Sec.204, emerg. eff. April 1, 1988, added Subsecs. (3) and (4); redesignated former Subsec. (3) as

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**→3-14-1-2 Printing, publishing or distribution of slate during primary campaign without authority**

Sec. 2. (a) A person who:

(1) prints, publishes, or distributes a slate during a primary election campaign without authority from and:

(A) over the name of an organization of voters, including the name of the organization and its officers; or

(B) if it is not an organized group of voters, over the names of at least ten (10) voters in the political subdivision in which the primary election is being held;

together with the name of the printer who printed the slate;

(2) prints on a slate during a primary election campaign the name or number of a candidate without the candidate's written consent; or

(3) prints, publishes, or distributes a slate during a primary election campaign unless at least five (5) days before it is printed and published the written consent of the voters over whose names it is published and the written consent of the candidates in whose behalf it is distributed are filed in the office of the county election board in each county where the election is held;

commits a Class A misdemeanor.

(b) As used in this section, "slate" means a sample ballot, reproduction of an official ballot, or a listing of candidates:

(1) having the names or numbers of more than one (1) candidate for nomination at a primary election; and

(2) that expresses support for more than one (1) of the candidates set forth on the ballot or list.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.463; P.L.10-1988, SEC.205; P.L.3-1997, SEC.399.

HISTORICAL AND STATUTORY NOTES

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P.L.3-1987, Sec.463, eff. Dec. 1, 1987, inserted "during a primary election campaign" in Subsecs. (a)(2) and

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**→3-14-1-3 Circulation or publication of anonymous campaign material**

Sec. 3. An individual, an organization, or a committee that circulates or publishes material in an election without the statement required under IC 3- 9-3-2.5 commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.206; P.L.5-1989, SEC.71; P.L.3-1997, SEC.400.

## HISTORICAL AND STATUTORY NOTES

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P.L.10-1988, Sec.206, emerg. eff. April 1, 1988, substituted references to an "individual, group of individuals, or committee" for a "person"; inserted "or public question"; deleted "and address" following "election without the name"; and made other nonsubstantive changes.

P.L.5-1989, Sec.71, substituted "an organization" for "group of individuals"; deleted "issues or" following "committee that"; substituted "or publishes material" for "a written or printed statement"; deleted "name of the individual, group of individuals, or committee that issued or circulated the" following "election without the"; substituted "required under IC 3-9-3-2" for "on it"; and made other nonsubstantive changes.

**1997 Legislation**

P.L.3-1997, Sec.400, emerg. eff. May 13, 1997, amended the section by deleting "concerning a candidate or public question" after "material"; and substituting "IC 3-9-3-2.5" for "IC 3-9-3-2".

**Formerly:**

IC 3-1-32-62.

Acts 1945, c. 208, s. 448.

Acts 1978, P.L.2, SEC.355.

## CROSS REFERENCES

Class A misdemeanor, penalty, see IC 35-50-3-2.

## LIBRARY REFERENCES

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**→3-14-1-6 Solicitation, challenge, or performance of election function by state police department civilian employee, police officer or firefighter**

Sec. 6. (a) A state police department employee or a police officer or firefighter (including a special duty, auxiliary, or volunteer police officer or firefighter) of a political subdivision who recklessly:

- (1) solicits votes or campaign funds;
- (2) challenges voters; or
- (3) performs any other election related function;

while wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty commits a Class A misdemeanor.

(b) This section does not prohibit any of the following:

- (1) A state police department civilian employee from voting while on duty.
- (2) A police officer or firefighter from voting while wearing any part of an official uniform or while on duty.
- (3) An individual described in subsection (a) from consenting to a photograph (or other visual depiction) of the individual wearing any part of the individual's official uniform appearing in an advertisement in support of a candidate or political party.
- (4) An individual from serving as a pollbook holder under IC 3-6-6-36.
- (5) A police officer wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty from serving as an absentee ballot courier appointed under IC 3-11.5-4-22.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.16-1987, SEC.1; P.L.12-1989, SEC.1; P.L.3-1997, SEC.401; P.L.176-1999, SEC.117.

HISTORICAL AND STATUTORY NOTES

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P.L.16-1987, Sec.1, amended the section by inserting "state police department civilian employee or a" in the

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**→3-14-1-7 Collection, receipt or disbursement of money or property by committee without appointment of treasurer**

Sec. 7. A committee subject to IC 3-9 or any of its members that recklessly collects, receives, keeps, or disburses money or other property to promote any activity to which IC 3-9 applies without appointing and maintaining a treasurer as required by IC 3-9-1 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

**HISTORICAL AND STATUTORY NOTES**

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**Formerly:**

IC 3-1-30-3.

IC 3-4-2-23.

Acts 1945, c. 208, s. 368.

Acts 1965, c. 179, s. 1.

Acts 1976, P.L.6, SEC.1.

**CROSS REFERENCES**

Class B misdemeanor, penalty, see IC 35-50-3-3.

**LIBRARY REFERENCES**

2006 Main Volume

Elections k317.2.

Westlaw Topic No. 144.

C.J.S. Elections § 329.

**RESEARCH REFERENCES**

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**Encyclopedias**

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**→3-14-1-10 Excess contributions by corporation or labor organization**

Sec. 10. A corporation or labor organization that recklessly exceeds any of the limitations on contributions prescribed by IC 3-9-2-4 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

**CROSS REFERENCES**

Class B misdemeanor, penalty, see IC 35-50-3-3.

**RESEARCH REFERENCES**

2006 Electronic Update

**Encyclopedias**

Ind. Law Encycl. Elections § 70, Campaign Violations.

Ind. Law Encycl. Elections § 80, Enforcement; Prosecution.

Ind. Law Encycl. Elections § 81, Enforcement; Prosecution -- Testimony of or Matters Produced by Witness; Use Against Witness.

**UNITED STATES SUPREME COURT**

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v. Massachusetts Citizens for Life, Inc., U.S.Mass.1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

I.C. 3-14-1-10, IN ST 3-14-1-10

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**→3-14-1-10.5 Acceptance of contributions in excess of permitted amounts by certain judges**

Sec. 10.5. (a) A person who recklessly violates IC 33-33-2-11 by accepting contributions that exceed the amount permitted under that section commits a Class B misdemeanor.

(b) A person described by subsection (a) is also subject to a civil penalty under IC 3-9-4-17. The county election board may assess a penalty of not more than three (3) times the amount of the contribution that exceeds the limit prescribed by IC 33-33-2-11, plus any investigative costs incurred and documented by the board.

CREDIT(S)

As added by P.L.3-1997, SEC.402. Amended by P.L.98-2004, SEC.44.

LIBRARY REFERENCES

2006 Main Volume

Elections k317.2.  
Westlaw Topic No. 144.  
C.J.S. Elections § 329.

I.C. 3-14-1-10.5, IN ST 3-14-1-10.5

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**→3-14-1-11 Contributions in the name of another person**

Sec. 11. A person who:

- (1) recklessly makes a contribution in the name of another person; or
- (2) knowingly accepts a contribution made by one person in the name of another person;

commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

**HISTORICAL AND STATUTORY NOTES**

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**Formerly:**

IC 3-1-30-11.

IC 3-4-3-6.

Acts 1945, c. 208, s. 376.

Acts 1975, P.L.19, SEC.3

Acts 1976, P.L.6, SEC.1.

**CROSS REFERENCES**

Class B misdemeanor, penalty, see IC 35-50-3-3.

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Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 356.

**RESEARCH REFERENCES**

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**→3-14-1-13 Filing fraudulent reports**

Sec. 13. A person who knowingly files a report required by IC 3-9 that is fraudulent commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-30-3.

IC 3-1-30-4.

IC 3-1-30-6.

IC 3-1-30-8.

IC 3-1-30-9.

IC 3-1-30-11.

IC 3-4-6-17.

Acts 1945, c. 208, ss. 368, 369, 371, 373, 374, 376.

Acts 1949, c. 25, s. 26.

Acts 1965, c. 179, ss. 1, 3, 5.

Acts 1975, P.L.19, SECS.1, 3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.361.

Acts 1979, P.L.5, SEC.10.

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**RESEARCH REFERENCES**

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**→3-14-1-14 Failure to file required report**

Sec. 14. A person who fails to file a report with the proper office as required by IC 3-9 commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.465.

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P.L.3-1987, Sec.465, eff. Dec. 1, 1987, substituted "class B misdemeanor" for "class A infraction".

**Formerly:**

IC 3-1-30-3.

IC 3-1-30-4.

IC 3-1-30-6.

IC 3-1-30-8.

IC 3-1-30-9.

IC 3-1-30-11.

IC 3-4-6-17.

IC 3-4-8-3.

Acts 1945, c. 208, ss. 368, 369, 371, 373, 374, 376.

Acts 1949, c. 25, s. 26.

Acts 1965, c. 179, ss. 2, 3, 5.

Acts 1975, P.L.19, SECS.1, 3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.361.

Acts 1979, P.L.5, SEC.10.

Acts 1981, P.L.19, SEC.3.

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**→3-14-1-14.5 Commingling committee funds with personal funds**

Sec. 14.5. A person who recklessly violates IC 3-9-2-9(c) by commingling the funds of a committee with the personal funds of an officer, a member, or an associate of the committee commits a Class B misdemeanor.

CREDIT(S)

As added by P.L.3-1993, SEC.231.

**CROSS REFERENCES**

Criminal prosecutions, self-incrimination defense not available to witness, see IC 3-14-5-6.

Prosecuting attorney's duty to prosecute election offenses, see IC 3-14-5-4.

**LIBRARY REFERENCES**

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Ind. Law Encycl. Elections § 80, Enforcement; Prosecution.

Ind. Law Encycl. Elections § 81, Enforcement; Prosecution -- Testimony of or Matters Produced by Witness; Use Against Witness.

I.C. 3-14-1-14.5, IN ST 3-14-1-14.5

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→ **3-14-1-16 Personal use of committee funds**

Sec. 16. A person who knowingly or intentionally violates IC 3-9-3-4 commits a Class A infraction.

CREDIT(S)

As added by P.L.13-1987, SEC.3.

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P.L.13-1987, Sec.3, eff. Jan. 1, 1988.

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Westlaw Topic No. 144.

C.J.S. Elections § 329.

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Ind. Law Encycl. Elections § 70, Campaign Violations.

I.C. 3-14-1-16, IN ST 3-14-1-16

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**→3-14-2-1 Conspiracy to submit false application for registration or to vote illegally; paying individual to vote**

Sec. 1. A person who knowingly does any of the following commits a Class D felony:

- (1) Conspires with an individual for the purpose of encouraging the individual to submit a false application for registration.
- (2) Conspires with an individual for the purpose of encouraging the individual to vote illegally.
- (3) Pays or offers to pay an individual for doing any of the following:
  - (A) Applying for an absentee ballot.
  - (B) Casting an absentee ballot.
  - (C) Registering to vote.
  - (D) Voting.
- (4) Accepts the payment of any property for doing any of the following:
  - (A) Applying for an absentee ballot.
  - (B) Casting an absentee ballot.
  - (C) Registering to vote.
  - (D) Voting.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.21.

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P.L.5-1986, Sec.10, emerg. eff. March 4, 1986.

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**→3-14-2-2 Fraudulent application for registration or procurement of registration**

Sec. 2. A person who, knowing the person is not a voter and will not be a voter at the next election, applies for registration or procures registration as a voter commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

**HISTORICAL AND STATUTORY NOTES**

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**Formerly:**

IC 3-1-32-50.

Acts 1945, c. 208, s. 436.

Acts 1978, P.L.2, SEC.347.

**LIBRARY REFERENCES**

2006 Main Volume

Elections ⇐312.

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C.J.S. Elections § 326.

**RESEARCH REFERENCES**

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**Encyclopedias**

Ind. Law Encycl. Elections § 76, Vote Fraud -- Conduct Involving Registration or Filling Out of Affidavits; Taking of Registration Materials.

I.C. 3-14-2-2, IN ST 3-14-2-2

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**→3-14-2-2.5 Absentee ballot fraud**

Sec. 2.5. A person who does either of the following, knowing that an individual is ineligible to register to vote or to vote, commits absentee ballot fraud, a Class D felony:

- (1) Solicits the individual to complete an absentee ballot application.
- (2) Solicits the individual to submit an absentee ballot application to a county election board.

CREDIT(S)

As added by P.L.103-2005, SEC.22.

**LIBRARY REFERENCES**

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**→3-14-2-3 Fraudulent subscription of another person's name to affidavit of registration or absentee ballot**

Sec. 3. A person who:

(1) subscribes the name of another person to an affidavit of registration or application for an absentee ballot knowing that the application contains a false statement; or

(2) subscribes the name of another person to an affidavit of registration or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.23.

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2005 Legislation

P.L.103-2005, Sec.23, amended this section by inserting "or application for an absentee ballot" in Subsecs. (1) and (2); and substituting "Class D felony" for "Class A misdemeanor" in the concluding language.

**Formerly:**

IC 3-1-32-51.

Acts 1945, c. 208, s. 437.

Acts 1978, P.L.2, SEC.348.

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**→3-14-2-4 Registering to vote more than once**

Sec. 4. A person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-54.

Acts 1945, c. 208, s. 440.

Acts 1978, P.L.2, SEC.350.

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2006 Main Volume

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Westlaw Topic No. 144.

C.J.S. Elections § 326.

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Ind. Law Encycl. Fraud § 6, Criminal Offenses.

I.C. 3-14-2-4, IN ST 3-14-2-4

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**→3-14-2-5 Destruction or failure to file or deliver absentee ballot application or registration affidavit or form after execution**

Sec. 5. (a) A person who recklessly destroys or fails to deliver an absentee ballot application to the proper officer after the application has been executed by another individual in accordance with IC 3-11-4 commits a Class A misdemeanor.

(b) A person who recklessly destroys or fails to file or deliver to the proper officer a registration affidavit or form of registration after the affidavit or form has been executed commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.24.

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume

2005 Legislation

P.L.103-2005, Sec.24, amended this section by adding Subsec. (a); and designating the previously undesignated language as Subsec. (b), and substituting "the affidavit or form" for "it" therein.

**Formerly:**

IC 3-1-32-53.

Acts 1945, c. 208, s. 439.

Acts 1978, P.L.2, SEC.349.

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**→3-14-2-6 Unauthorized release or removal of registration materials from circuit court office**

Sec. 6. A person who knowingly, intentionally, or recklessly releases or removes any registration materials or information contained in the computerized list maintained under IC 3-7-26.3 from the county voter registration office, except when release or removal is necessary:

- (1) to comply with IC 3-7; or
- (2) for the destruction of the materials under IC 5-15-6;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.12-1995, SEC.87; P.L.4-1996, SEC.87; P.L.209-2003, SEC.192; P.L.164-2006, SEC.131.

## HISTORICAL AND STATUTORY NOTES

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2006 Legislation

P.L.164-2006, Sec.131, amended this section by deleting "after December 31, 2005".

2006 Main Volume

P.L.12-1995, Sec.87, emerg. eff. retroactive to Jan. 1, 1995, substituted "IC 3-7-38" for "IC 3-7-3-14".

P.L.4-1996, Sec.87, emerg. eff. March 21, 1996, deleted "including envelopes or post cards returned by the United States Postal Service under IC 3-7-38," after "registration materials" in the first paragraph.

2003 Legislation

P.L.209-2003, Sec.192, amended this section by inserting "knowingly, intentionally, or recklessly" before and "or, after December 31, 2005, information contained in the computerized list maintained under IC 3-7-26.3" after "releases or removes any registration materials"; by inserting "county voter registration" before "office"; and by deleting "of the circuit court clerk or board of registration,".

**Formerly:**

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**→3-14-2-7 Withholding information or furnishing false information to poll taker; return of false names or names of deceased persons**

Sec. 7. A person who knowingly:

- (1) upon the demand of a poll taker, withholds any information from the poll taker with regard to the qualifications of a voter or person not entitled to vote;
- (2) furnishes to a poll taker any false information with regard to the qualifications of any person for voting; or
- (3) returns to the poll taker as voters any false names or the names of any persons who are dead or are not voters;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-55.

IC 3-1-32-56.

Acts 1945, c. 208, ss. 441, 442.

Acts 1978, P.L.2, SECS.351, 352.

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**→3-14-2-8 Return of ineligible person, fictitious or deceased's names by poll taker**

Sec. 8. A poll taker who knowingly returns:

- (1) the name of a person who is not entitled to vote in the precinct for which the poll is taken at the next election;
- (2) a fictitious name; or
- (3) the name of a dead person;

commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-57.

Acts 1945, c. 208, s. 443.

Acts 1978, P.L.2, SEC.353.

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**→3-14-2-9 Unregistered or unauthorized voting**

Sec. 9. A person who knowingly votes or offers to vote at an election when the person is not registered or authorized to vote commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-10.

Acts 1945, c. 208, s. 396.

Acts 1969, c. 222, s. 33.

Acts 1978, P.L.2, SEC.314.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Corrupt practice acts. 20 Notre Dame Law. 284 (1945).

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**→3-14-2-10 Voting by ineligible persons**

Sec. 10. A person who recklessly votes at an election, unless the person is a registered voter under the requirements of IC 3-7 at the time of the election, commits a Class A misdemeanor.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**→3-14-2-11 Voting in other precincts**

Sec. 11. Except as provided by IC 3-10-10, IC 3-10-11, or IC 3-10-12, a person who knowingly votes or offers to vote in a precinct except the one in which the person is registered and resides commits a Class D felony.

**CREDIT(S)**

As added by P.L.5-1986, SEC.10. Amended by P.L.3-1987, SEC.466; P.L.10-1988, SEC.208; P.L.17-1993, SEC.17; P.L.12-1995, SEC.88.

**HISTORICAL AND STATUTORY NOTES****2006 Main Volume**

P.L.3-1987, Sec.466, eff. Dec. 1, 1987, inserted "Except as provided by IC 3-7-4".

P.L.10-1988, Sec.208, emerg. eff. April 1, 1988, inserted "or IC 3-7-8-2".

P.L.17-1993, Sec.17, substituted "IC 3-7-4.5" for "IC 3-7-8-2".

P.L.12-1995, Sec.88, emerg. eff. retroactive to Jan. 1, 1995, substituted "IC 3-10-10, IC 3-10-11, or IC 3-10-12," for "IC 3-7-4 or IC 3-7-4.5".

**Formerly:**

IC 3-1-32-11.

Acts 1945, c. 208, s. 397.

Acts 1969, c. 222, s. 34.

Acts 1978, P.L.2, SEC.315.

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**→3-14-2-12 Voting or applying to vote in false name and own name**

Sec. 12. A person who:

- (1) knowingly votes or makes application to vote in an election in a name other than the person's own; or
- (2) having voted once at an election, knowingly applies to vote at the same election in the person's own name or any other name;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-30-11.

IC 3-4-7-4.

Acts 1945, c. 208, s. 376.

Acts 1975, P.L.19, SEC.3.

Acts 1976, P.L.6, SEC.1.

Acts 1978, P.L.2, SEC.365.

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**→3-14-2-13 Hiring or soliciting person to vote in precinct where person is not voter**

Sec. 13. A person who knowingly hires or solicits another person to go into a precinct for the purpose of voting at an election at the precinct when the person hired or solicited is not a voter in the precinct commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.25.

**HISTORICAL AND STATUTORY NOTES**

2006 Main Volume

2005 Legislation

P.L.103-2005, Sec.25, amended this section by rewriting the contents thereof, which prior thereto read as follows:

"A person who knowingly hires or solicits another person:

"(1) to come into Indiana; or

"(2) to go from one precinct into another precinct;

"for the purpose of voting at an election when the person hired or solicited is not a voter in Indiana or the precinct commits a Class D felony."

**Formerly:**

IC 3-1-32-14.

Acts 1945, c. 208, s. 400.

Acts 1978, P.L.2, SEC.316.

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**→ 3-14-2-14 Precinct officer or public official allowing ineligible voters or unauthorized procedure**

Sec. 14. A precinct election officer or public official upon whom a duty is imposed by this title who knowingly:

- (1) allows a person to vote who is not entitled to vote; or
- (2) allows a person to vote by use of an unauthorized procedure;

commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10.

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**Formerly:**

IC 3-1-32-17.

Acts 1945, c. 208, s. 403.

Acts 1969, c. 222, s. 35.

Acts 1978, P.L.2, SEC.319.

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**→3-14-2-15 Unauthorized delivery of ballots**

Sec. 15. A member, an employee, or an agent of a county election board who knowingly delivers a ballot to a person except in the manner prescribed by this title commits a Class D felony.

CREDIT(S)

As added by P.L.5-1986, SEC.10. Amended by P.L.8-1995, SEC.65; P.L.103-2005, SEC.26.

## HISTORICAL AND STATUTORY NOTES

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P.L.8-1995, Sec.65, rewrote this section, which prior thereto read:

"A member or employee of the state election board or of a county election board who knowingly delivers a ballot to a person except in the manner prescribed by this title commits a Class D felony."

## 2005 Legislation

P.L.103-2005, Sec.26, amended this section by substituting ", an employee, or an agent" for "of the commission, an employee of the commission, or a member".

**Formerly:**

IC 3-1-32-21.

Acts 1945, c. 208, s. 407.

Acts 1978, P.L.2, SEC.322.

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**→3-14-2-16 Ballots; fraudulent application, showing, examination, receipt, delivery, possession, or completion or signing**

Sec. 16. A person who knowingly does any of the following commits a Class D felony:

- (1) Applies for or receives a ballot in a precinct other than that precinct in which the person is entitled to vote.
- (2) Except when receiving assistance under IC 3-11-9, shows a ballot after it is marked to another person in such a way as to reveal the contents of it or the name of a candidate for whom the person has voted.
- (3) Except when offering assistance requested by a voter in accordance with IC 3-11-9, examines a ballot that a voter has prepared for voting or solicits the voter to show the ballot.
- (4) Receives from a voter a ballot prepared by the voter for voting, except:
  - (A) the inspector;
  - (B) a member of the precinct election board temporarily acting for the inspector;
  - (C) a member or an employee of a county election board (acting under the authority of the board and state law) or an absentee voter board member acting under IC 3-11-10; or
  - (D) a member of the voter's household, an individual designated as attorney in fact for the voter, or an employee of:
    - (i) the United States Postal Service; or
    - (ii) a bonded courier company;
 (acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot under IC 3-11-10-1.
- (5) Receives a ballot from a person other than one of the poll clerks or authorized assistant poll clerks.
- (6) Delivers a ballot to a voter to be voted, unless the person is:
  - (A) a poll clerk or authorized assistant poll clerk; or
  - (B) a member of a county election board or an absentee voter board acting under IC 3-11-10.

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HAWAII REVISED STATUTES ANNOTATED

DIVISION 1. GOVERNMENT.

TITLE 2. ELECTIONS.

CHAPTER 19. ELECTION OFFENSE.

**§ 19-1 Classes of offenses.**

Except as otherwise provided, offenses against the election laws contained in this title are divided into two classes: "election frauds" and "misdemeanors".

(L 1970, c 26, pt of § 2)

H R S § 19-1, HI ST § 19-1

Current through 2005 Legislation

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HAWAII REVISED STATUTES ANNOTATED  
DIVISION 1. GOVERNMENT.  
TITLE 2. ELECTIONS.  
CHAPTER 19. ELECTION OFFENSE.  
**§ 19-3 Election frauds.**

The following persons shall be deemed guilty of an election fraud:

(1) Every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any elector, or to or for any person for an elector, or to or for any person in order to induce any elector to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election;

(2) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election; or who knowingly pays or causes to be paid any money to any person in the discharge or repayment of any money wholly or partly expended in bribery at any election, or for any purpose connected with or incidental to any election;

(3) Every elector who, before, during or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for oneself or any other person for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or party;

(4) Every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise;

(5) Every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once

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voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting;

(6) Every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election;

(7) Every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement or procurement;

(8) Every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections who wilfully fails, neglects, or refuses to do or perform the same, or who is guilty of any wilful violation of any of the provisions thereof;

(9) Any person wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting machine while the same is in use at any election, or who, after the machine is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting machine; and

(10) Every person who, directly or indirectly, personally or through another, wilfully designs, alters, accesses, or programs any electronic voting system to cause the system to inaccurately record, tally, or report votes cast on the electronic voting system.

(L 1970, c 26, pt of § 2; am imp L 1984, c 90, § 1; am L 1989, c 88, § 2; am L 2005, c 200, § 2)

#### NOTES, REFERENCES, AND ANNOTATIONS

Cross references. --

As to voting by absentee voter at polls, see § 15-11.

#### NOTES TO DECISIONS

Constitutionality of clause in paragraph (8). --

Former clause in paragraph (8), which read "or who wilfully performs it in such a way as to hinder the objects thereof", was unconstitutionally vague, in violation of the due process clause of Haw. Const., Art. I, § 5; the remainder of the subsection was not invalidated since the other clauses were separable from the unconstitutional clause. *State v. Albano*, 67 Haw. 398, 688 P.2d 1152, 1984 Haw. LEXIS 130 (1984).

State was not required to seek federal approval of amendments to election fraud and registration statutes under the Federal Voting Rights Act of 1965, where the pertinent provisions had not been altered in substance. *State v. Albano*, 68 Haw. 516, 722 P.2d 453, 1986 Haw. LEXIS 94 (1986).

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**§ 19-3.5 Voter fraud.**

The following persons shall be guilty of a class C felony:

- (1) Any person who knowingly registers another person to vote when that person is not entitled to register to vote;
- (2) Any person who knowingly votes when the person is not entitled to vote;
- (3) Any person who knowingly takes an oath in this title prescribed or authorized by law and willfully makes any false statement of fact while under oath therein; or
- (4) Any person who willfully makes a false answer to any question asked of the person while under oath in this title prescribed or authorized by law.

(L 1990, c 115, § 2)

"Knowingly." --

Immigration judge erred when he ordered an alien to be removed pursuant to 8 U.S.C.S. § 1227(a)(6)(A), based upon a finding that the alien had knowingly committed voter fraud in violation of HRS § 19-3.5(2); the alien did not have the requisite mens rea to commit voter fraud under § 19-3.5(2) because, although she knowingly voted, she did not know at the time she voted that she was ineligible to do so. McDonald v. Gonzales, 400 F.3d 684, 2005 U.S. App. LEXIS 3498 (2005).

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**§ 19-4 Penalties; disqualification for, removal from office; reports of convictions to chief election officer.**

Every person found guilty of an election fraud shall be fined not less than \$100 nor more than \$1,000, or imprisoned at hard labor not more than two years, or both. Besides the punishment, the person shall be disqualified from voting and from being elected to, holding or occupying any office, elective or appointive. If the person so convicted holds any office, either elective or appointive, at the time of the conviction, the office shall at once and without mention in the sentence or other proceeding be vacated by the conviction. The judge before whom the conviction is had shall immediately transmit to the chief election officer and to the respective county clerks the name of the person, the offense of which the person has been convicted and the sentence of the court.

(L 1970, c 26, pt of § 2; am L 1970, c 188, § 39; am imp L 1984, c 90, § 1)

H R S § 19-4, HI ST § 19-4

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**§ 19-6 Misdemeanors.**

The following persons shall be guilty of a misdemeanor:

(1) Any person who offers any bribe or makes any promise of gain, or with knowledge of the same permits any person to offer any bribe or make any promise of gain for the person's benefit to any voter to induce the voter to sign a nomination paper, and any person who accepts any bribe or promise of gain of any kind as consideration for signing the same, whether the bribe or promise of gain be offered or accepted before or after the signing;

(2) Any person who wilfully tears down or destroys or defaces any election proclamation or any poster or notice or list of voters or visual aids or facsimile ballot, issued or posted by authority of law;

(3) Any person printing or duplicating or causing to be printed or duplicated any ballot, conforming as to the size, weight, shape, thickness, or color to the official ballot so that it could be cast or counted as an official ballot in an election;

(4) Every person who is disorderly or creates a disturbance whereby any meeting of the precinct officials or the board of registration of voters during an election is disturbed or interfered with; or whereby any person who intends to be lawfully present at any meeting or election is prevented from attending; or who causes any disturbance at any election; and every person assisting or aiding or abetting any disturbance;

(5) Every person who, either in person or through another, in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any meeting of the board of registration of voters, or in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any election;

(6) Any person, other than those designated by section 11-132, who remains or loiters within the area set aside for voting as set forth in section 11-132 during the time appointed for voting;

(7) Any person, including candidates, carrying on any campaign activities within the area described in section 11-132 during the period of time starting one hour before the polling place opens and ending when the polling place closes for the purpose of influencing votes. Campaign activities shall include the following:

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- (A) Any distribution, circulation, carrying, holding, posting, or staking of campaign cards, pamphlets, posters and other literature;
- (B) The use of public address systems and other public communication media;
- (C) The use of motor caravans or parades; and
- (D) The use of entertainment troupes or the free distribution of goods and services;
- (8) Any person who opens a return envelope containing an absentee ballot voted under chapter 15 other than those authorized to do so under chapter 15;
- (9) Any unauthorized person found in possession of any voting machine or keys thereof;
- (10) Every person who wilfully violates or fails to obey any of the provisions of law, punishment for which is not otherwise in this chapter specially provided for.

(L 1970, c 26, pt of § 2; am L 1973, c 217, § 8; am L 1974, c 34, § 5(b); am L 1975, c 36, § 6 and c 146, § 2(b); am L 1976, c 106, § 5; am L 1980, c 264, § 7; am L 1989, c 121, § 2; am L 1990, c 115, § 3)

## NOTES, REFERENCES, AND ANNOTATIONS

Cross references. --

As to tampering with absentee ballot box or opening it before time prescribed, see § 15-8. As to violation of procedure for counting absentee ballots, see § 15-10. As to holding or display of moveable sign within right-of-way boundaries of public highway or sidewalk or adjacent to highway for political campaign purposes, see § 291C-77.

## NOTES TO DECISIONS

Where criminal statute, as this section, fails to proscribe specifically the alleged offense, it cannot be said that the defendants are in violation of the statute. *Coray v. Ariyoshi*, 54 Haw. 254, 506 P.2d 13, 1973 Haw. LEXIS 185 (1973).

Where poll watcher is person authorized to be in the precinct in question and where his action therein is not specifically proscribed, it cannot be said that he is in violation of § 11-132 and this section. *Coray v. Ariyoshi*, 54 Haw. 254, 506 P.2d 13, 1973 Haw. LEXIS 185 (1973).

Use of poll watchers information beyond 1000 foot perimeter. --

In the absence of constitutional objections, what is done beyond the 1000 feet perimeter with the information recorded by the poll watchers is a matter strictly for the legislature. *Coray v. Ariyoshi*, 54 Haw. 254, 506 P.2d 13, 1973 Haw. LEXIS 185 (1973). Cited in *State v. Park*, 55 Haw. 610, 525 P.2d 586, 1974 Haw. LEXIS 137 (1974); *State v. Good Guys for Fasi*, 56 Haw. 88, 528 P.2d 811, 1974 Haw. LEXIS 91

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▣ Chapter 23. Penal and Enforcement Provisions

**→§ 2301. Neglect of duty; corrupt or fraudulent conduct; penalty**

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of such duty shall be fined not more than \$200 or imprisoned not more than 2 years or both.

45 Laws 1945, ch. 144, § 8; 45 Laws 1945, ch. 148, § 8; 45 Laws 1945, ch. 149, § 8.

## CROSS REFERENCES

Voter registration, constitutional provision, see Del. Const. Art. 5, § 4.

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

## LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 2301, DE ST TI 15 § 2301

Current through 75 Laws 2006, ch. 441.

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**→§ 2302. Wrongful registration; assault; riot; breach of peace; penalty**

Whoever causes or attempts to cause himself or herself to be registered in: (1) The name of any other person living or dead or under any fictitious name; or (2) any election district in this State, knowing that he or she has not the right to be registered; or (3) whoever, knowing himself or herself to be registered in any election district in this State, causes or attempts to cause himself or herself to be registered in any other election district in this State without having first caused his or her record to be removed from the Election District Record in which his or her original permanent registration record may have been previously entered; or (4) whoever, knowing himself or herself to be disqualified as a voter at the next following general election, causes or attempts to cause himself or herself to be entered in the Election District Record in any election district in this State as a registered voter therein or unlawfully interferes with any registrar, alternate registrar or assistant registrar in the discharge of his or her duties under this title; or (5) whoever makes any assault or commits any assault and battery or incites or creates any riot or breach of the peace at or near to any place of registration in this State during the sitting of any registration officers; shall be fined not less than \$50 or more than \$200 or imprisoned not less than 30 days or more than 2 years or both.

19 Laws 1891, ch. 38, § 21; 21 Laws 1898, ch. 36, § 24; 34 Laws 1925, ch. 106, § 1; 50 Laws 1955, ch. 170, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## CROSS REFERENCES

Assault and related offenses, see 11 Del.C. § 601 et seq.

Disorderly conduct, see 11 Del.C. § 1301.

Riot, generally, see 11 Del.C. § 1302.

## LIBRARY REFERENCES

Elections ↪312, 319.

Westlaw Key Number Searches: 144k312; 144k319.

C.J.S. Elections §§ 326, 330.

## NOTES OF DECISIONS

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Chapter 23. Penal and Enforcement Provisions

**→§ 2303. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; penalty**

(a) Whoever, being a registrar, alternate registrar or assistant registrar:

(1) Fraudulently enters or permits to be entered in any registration record the name of any person as a registered voter who is not entitled to be entered therein as a registered voter; or

(2) Fraudulently refuses or omits to register or fraudulently misspells in any registration record in his or her charge the name of any person entitled under this title to have his or her name entered in such registration records; or

(3) Fraudulently removes from any Election District Record in his or her charge the original permanent registration record of any person entered therein; or

(4) Makes any entry in any registration record, except at the time and in the manner in this title provided; or

(5) Does anything which is by this title forbidden to do; or

(6) Whoever, being a registrar, alternate registrar or assistant registrar, inspector or judge of election:

a. Loses any registration records which may be in his or her charge or custody; or

b. Willfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes any registration record; or

c. Knowingly makes any false entry in or false copy of any registration record or any part thereof; or

d. Fraudulently makes any entry, erasure or alteration in any registration record;

shall be deemed to have knowingly and willfully violated his or her official duty and shall be fined in such amount or imprisoned for such term or both as the court in its discretion may determine.

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**→§ 2304. Alcoholic liquor in registration places; penalty**

Whoever, during the sitting of the registration officers in any election district in this State, brings, takes, orders or sends into, or attempts to bring, take or send into, any place of registration any alcoholic liquor, or, at any such time or place, drinks or partakes of any such liquor, shall be fined not more than \$100 or imprisoned not more than 90 days, or both.

19 Laws 1891, ch. 39, § 32; 21 Laws 1898, ch. 36, § 22; 34 Laws 1925, ch. 106, § 1.

LIBRARY REFERENCES

Intoxicating Liquors ↪139.

Westlaw Key Number Search: 223k139.

C.J.S. Intoxicating Liquors §§ 323, 361 to 364, 366 to 368.

15 Del.C. § 2304, DE ST TI 15 § 2304

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**→§ 2305. Intimidation of registration officers; penalty**

If any person, firm, corporation or employer existing or doing business in this State hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed a registration officer under the laws of this State from qualifying and performing such person's duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State.

In any trial under this section the acts of any officer of a corporation, so far as they affect an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether special or general authority as to such acts from the corporation is shown or not.

Nothing contained in this section shall be construed to relieve any officer of a corporation from individual liability under this section.

45 Laws 1945, ch. 144, § 24; 45 Laws 1945, ch. 148, § 24; 45 Laws 1945, ch. 149, § 24; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections 320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

15 Del.C. § 2305, DE ST TI 15 § 2305

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**→§ 2306. Notice to Attorney General of violations of registration laws**

Each department shall notify the Attorney General of all violations of the registration laws.

45 Laws 1945, ch. 144, § 9; 45 Laws 1945, ch. 148, § 9; 45 Laws 1945, ch. 149, § 9; 49 Laws 1953, ch. 4, § 5.

15 Del.C. § 2306, DE ST TI 15 § 2306

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**→§ 2307. Unauthorized entering of registration area; interference with registration; penalty**

(a) Whoever, not being a registration officer or other department of elections personnel, enters the prohibited registration area, as stipulated in § 2011 of this title, during the hours of registration other than to register to vote shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the prohibited registration area, as stipulated in § 2011 of this title, during the hours of registration for the purpose of interfering with the registration officers in the discharge of their duties or whoever attempts to molest, disturb or prevent the registration officers or any of those seeking to register from proceeding regularly with registration, shall be fined not less than \$500 nor more than \$1,000 or imprisoned not less than 90 days nor more than 3 years, or both.

58 Laws 1972, ch. 401, § 3.

## LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

15 Del.C. § 2307, DE ST TI 15 § 2307

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▣ Subchapter I. General Provisions

**→§ 5101. Jurisdiction of Court**

The Superior Court shall have exclusive, original jurisdiction of offenses under this title and no prosecution for the violation of any section of this title shall be brought in any other court.

## CROSS REFERENCES

Election offenses, constitutional provisions, see Del. Const. Art. 5, §§ 7 to 9

Enumeration of election offenses, effect, see Del. Const. Art. 5, § 9.

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

## LIBRARY REFERENCES

Elections ↪325.

Westlaw Key Number Search: 144k325.

## RESEARCH REFERENCES

**Encyclopedias**

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

15 Del.C. § 5101, DE ST TI 15 § 5101

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**→§ 5102. Prosecution by Attorney General; duty to report violations**

(a) The Attorney General shall immediately prosecute to final judgment all complaints which may be made of a violation of this title.

(b) Each department of election and all election officers shall notify the Attorney General of all violations of this title.

19 Laws 1891, ch. 39, § 53; 45 Laws 1945, ch. 144, § 9; 45 Laws 1945, ch. 148, § 9; 45 Laws 1945, ch. 149, § 9; 49 Laws 1953, ch. 4, § 5.

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Elections and political activities, Federal crimes and offenses, see 18 USCA § 591 et seq.

15 Del.C. § 5102, DE ST TI 15 § 5102

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Subchapter I. General Provisions

**→§ 5103. Irregularities or defects in election as a defense**

Irregularities or defects in the mode of noticing, canvassing, polling or conducting any election shall not be a defense to a prosecution for any violation of this title.

19 Laws 1891, ch. 39, § 51.

LIBRARY REFERENCES

Elections ↪321.

Westlaw Key Number Search: 144k321.

15 Del.C. § 5103, DE ST TI 15 § 5103

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**→§ 5104. Honest belief as a defense**

Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any fact tending to show that he or she honestly believed upon good reason that the vote complained of was a lawful one.

19 Laws 1891, ch. 39, § 52; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪321.  
 Westlaw Key Number Search: 144k321.

15 Del.C. § 5104, DE ST TI 15 § 5104

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**→§ 5105. Application to school elections**

The provisions of this chapter shall additionally be applicable to any local school elections held under Title 14.

67 Laws 1990, ch. 243, § 10.

## NOTES OF DECISIONS

**In general 1**

## 1. In general

The Cape Henlopen School District did not violate any criminal statutes when it offered a free pizza party for the school with the documented highest percentage of students whose parents voted in a district referendum. Nor did an alleged \$5000 donation to Cape that paid for Cape's support of the referendum violate Delaware's Campaign Finance Act. Title 15, including, 15 Del. C. § 5105 criminalizes specified conduct by or toward election officers. No allegations regarding the conduct of or toward election officers arose in Cape Henlopen. A civil cause would be possible pursuant to 15 Del. C. § 5162 if the voter can allege that a person attempted to control the exercise of his or her right to vote. Because this statute creates a civil claim rather than a criminal offense, the Attorney General has no jurisdiction to enforce its provisions. Op.Atty.Gen 06-IB04, (March 23, 2006) 2006 WL 1242015

15 Del.C. § 5105, DE ST TI 15 § 5105

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**→§ 5111. Neglect of duty by department member; corrupt or fraudulent conduct; penalty**

Whoever, being a member of a department, is guilty of any wilful neglect of any duty imposed by this title or of any corrupt or fraudulent conduct or practice in the execution of the same, shall be fined not more than \$200 or imprisoned not more than 2 years, or both.


45 Laws 1945, ch. 144, § 8; 45 Laws 1945, ch. 148, § 8; 45 Laws 1945, ch. 149, § 8.

## CROSS REFERENCES

Election offenses, constitutional provisions, see Del. Const. Art. 5, §§ 7 to 9

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

## LIBRARY REFERENCES

Elections  314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 5111, DE ST TI 15 § 5111

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**→§ 5112. Refusal of inspector or judge of election to serve; penalty**

Whoever, having been appointed an inspector or judge of election in any election district, refuses to serve shall be fined \$50.

21 Laws 1898, ch. 38, § 11.

LIBRARY REFERENCES

Elections 314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5112, DE ST TI 15 § 5112

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**→§ 5113. Refusal of clerk of election to qualify or serve; penalty**

Whoever, having been appointed a clerk of election, refuses to qualify or having qualified fails or refuses to perform any of the duties of his or her office shall be fined not less than \$50 nor more than \$100.

28 Laws 1915, ch. 92; 37 Laws 1931, ch. 120; 42 Laws 1939, ch. 115, § 13; 45 Laws 1945, ch. 148, § 29; 45 Laws 1945, ch. 149, § 29; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections 314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5113, DE ST TI 15 § 5113

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**→§ 5114. Improper conduct of printer of ballots and ballot envelopes; penalty**

If the printer of the ballot or envelope or any person employed in printing the same:

(1) Knowingly gives or delivers or knowingly permits to be taken any ballots or envelopes by any person other than the department of elections for whom such ballots and envelopes are being printed; or

(2) Prints or causes or permits to be printed any ballot or envelope in any other form than the one prescribed by this title or with any other names thereon than those authorized by the department of elections or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the department of elections,

he or she shall be fined not less than \$100 nor more than \$500 or imprisoned not less than 1 nor more than 5 years, or both.

19 Laws 1891, ch. 37, § 10; 27 Laws 1913, ch. 65; 58 Laws 1971, ch. 148, § 119; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections 309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5114, DE ST TI 15 § 5114

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**→§ 5115. Improper use of ballot or envelope; penalty**

Whoever:

- (1) Forges or falsely makes the official endorsement of any ballot or envelope;  
or
- (2) Prints or causes to be printed any imitation ballot or envelope or circulates the same; or
- (3) Conspires with other persons or induces or attempts to induce any other person to do any of such acts, whether or not any of such acts are committed or attempted to be committed,

shall be fined not less than \$100 nor more than \$500 or may be imprisoned not more than 5 years.

19 Laws 1891, ch. 37, § 30; 27 Laws 1913, ch. 65, § 27.

LIBRARY REFERENCES

Elections ↪309.  
 Westlaw Key Number Search: 144k309.  
 C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5115, DE ST TI 15 § 5115

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**→§ 5116. Tampering with voting machines; penalties**

Whoever before the opening of the election registers any vote on a voting machine or at any time tampers with, disarranges, defaces, impairs in any manner or destroys a voting machine or any part thereof, including the ballots on its face, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not less than 1 nor more than 2 years.

19 Laws 1891, ch. 37, § 13; 27 Laws 1913, ch. 65, § 11; 49 Laws 1953, ch. 18, § 2;  
 58 Laws 1971, ch. 148, § 120.

## LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5116, DE ST TI 15 § 5116

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**→§ 5117. Unauthorized entering of voting room; penalties**

(a) Whoever does not meet the qualifications of § 4933 of this title, and enters the voting room on the day of election other than to vote, shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 30 days nor more than 2 years, or both.

(b) Whoever enters the voting room on the day of election for the purpose of disrupting the election shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 1 year nor more than 5 years.

21 Laws 1898, ch. 38, § 15; 57 Laws 1969, ch. 181, § 71.

LIBRARY REFERENCES

Elections ↪319.  
Westlaw Key Number Search: 144k319.  
C.J.S. Elections § 330.

15 Del.C. § 5117, DE ST TI 15 § 5117

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**→§ 5118. Interference with election; penalties**

(a) Whoever:

(1) Enters or attempts to enter the voting room before the hour of opening the polls on the day of election or at the time of opening the election, or at any time during the day of the election and before the hour of closing the election for the purpose of interfering with the election officers in the discharge of their duties as such or for any purpose; or

(2) Attempts to molest, disturb or prevent the election officers from proceeding regularly with any general or special election; or

(3) Takes charge or attempts to take charge of any voting room or place where the election is held within the time mentioned in this subsection for the purpose of preventing or delaying an election or for any other purpose on election day;

shall be fined not less than \$500 nor more than \$1,000, and imprisoned not more than 3 years.

(b) Whoever, not in this title authorized so to do, enters or attempts to enter the election room or within the railing leading to the entrance of the election room, or remains within 30 feet of the polling place, contrary to this title, shall be fined not more than \$200.

(c) Whoever resists a challenger appointed pursuant to §§ 3164 and 4934 of this title or a special officer appointed pursuant to § 4935 of this title shall be fined not more than \$100 or imprisoned not more than one year.

19 Laws 1891, ch. 37, §§ 2, 17, 33; 19 Laws 1891, ch. 39, § 14; 20 Laws 1897, ch. 396, §§ 3, 6; 21 Laws 1898, ch. 38, § 16; 26 Laws 1911, ch. 49; 27 Laws 1913, ch. 65, §§ 2, 15, 30; 58 Laws 1971, ch. 148, § 121.

LIBRARY REFERENCES

Elections ↪319.  
 Westlaw Key Number Search: 144k319.  
 C.J.S. Elections § 330.

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**→§ 5119. Feigning a physical disability to obtain assistance in voting;  
 penalty**

(a) Whoever, being an elector, feigns a physical defect or disability in order to be permitted to bring into the election room or voting booth another person, shall be fined \$100 and shall be imprisoned not more than 2 years.

(b) Whoever, being an elector selected to assist any person by reason of such person's physical defects, reveals how such elector has voted or what persons were voted for by such elector on any ballot or gives any information concerning the appearance of any ballot voted, shall be fined \$100 and imprisoned not less than 1 nor more than 3 years.

20 Laws 1897, ch. 396, § 1; 27 Laws 1913, ch. 65, § 20; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Assistance for disabled voters, see 15 Del.C. § 4943.

LIBRARY REFERENCES

Elections ↪318.  
 Westlaw Key Number Search: 144k318.  
 C.J.S. Elections § 331.

15 Del.C. § 5119, DE ST TI 15 § 5119

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**→§ 5120. Secreting person in election room; penalty**

Whoever, other than the election officers, secretes or attempts to secrete himself or herself in any part of the polling room during the hours of the election for any purpose whatsoever, shall be fined not less than \$100 and may be imprisoned not more than 1 year.

20 Laws 1897, ch. 396, § 12; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5120, DE ST TI 15 § 5120

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**→§ 5121. Removal or destruction of election supplies or equipment or voting machines; penalty**

(a) Whoever, during the general election:

(1) Removes or destroys any of the supplies or other conveniences placed in the booths or delivered to the voter for the purpose of enabling the voter to prepare his or her ballot; or

(2) Removes, tears down or defaces the cards printed for the instruction of the voters; or

(3) Destroys or removes any booth, railing or other conveniences provided for such election; or

(4) Tampers with, disarranges, defaces or impairs in any manner the use of or destroys any voting machine or the ballots on the face of a voting machine;

shall be imprisoned not less than 6 months nor more than 1 year.

(b) Whoever induces or attempts to induce any person to commit any of the acts described in subsection (a) of this section, whether or not any such acts are committed or attempted to be committed shall be imprisoned not less than 6 months nor more than 1 year.

19 Laws 1891, ch. 37, § 36; 27 Laws 1913, ch. 65, § 33; 49 Laws 1953, ch. 18, § 4; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↩319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

15 Del.C. § 5121, DE ST TI 15 § 5121

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**→§ 5122. Disclosures by election officers; penalty**

Whoever, being an election officer:

- (1) Reveals to any person how any elector has voted or what persons were voted for by any elector on any ballot; or
- (2) Gives any information concerning the appearance of any ballot voted or envelope used;

shall be fined not more than \$500 and imprisoned not less than 2 nor more than 5 years.

20 Laws 1897, ch. 396, § 11; 27 Laws 1913, ch. 396, § 11; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5122, DE ST TI 15 § 5122

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**→§ 5123. Intimidation, persuasion or bribery by election officer; penalty**

Whoever, being an election officer:

(1) In any manner attempts to influence, persuade, intimidate, bribe or coerce any voter in the marking of the voter's ballot, or in the making of the choice of the persons for whom the voter votes; or

(2) Discloses the manner in which any person has voted;

shall be deemed to have knowingly and wilfully violated his or her official duty, shall be guilty of wilful and deliberate perjury, and, in addition to the penalties and disabilities annexed to such crime, be fined not more than \$500 and may be imprisoned not more than 2 years.

19 Laws 1891, ch. 37, § 25; 27 Laws 1913, ch. 65, § 22; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## CROSS REFERENCES

Bribery, see 11 Del.C. § 1201 et seq.

Reading of election law prior to opening of polls, see 15 Del.C. § 4903.

## LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.

C.J.S. Elections § 327.

15 Del.C. § 5123, DE ST TI 15 § 5123

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**→§ 5124. Inducing the making of distinguishing mark on ballot; penalty**

Whoever induces or attempts to induce any elector to write, paste or otherwise place on his or her ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such elector has voted; or whoever enters into or attempts to form any agreement or conspiracy with any other person to induce or attempt to induce any elector to so place any distinguishing mark or name on his or her ballot, whether or not such act be committed or attempted to be committed; shall be imprisoned not more than 2 years.

19 Laws 1891, ch. 37, § 34; 27 Laws 1913, ch. 65, § 31; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Reading of election law prior to opening of polls, see 15 Del.C. § 4903.

LIBRARY REFERENCES

Elections ↪313.  
 Westlaw Key Number Search: 144k313.  
 C.J.S. Elections § 325.

15 Del.C. § 5124, DE ST TI 15 § 5124

Current through 75 Laws 2006, ch. 441.  
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**→§ 5125. Inducing election officers to violate election laws; penalty**

Whoever induces or attempts to induce any election officers to violate any of the provisions of this title whether or not such election officers violate or attempt to violate any of such provisions shall be imprisoned not more than 5 years.

27 Laws 1913, ch. 65, § 32.

CROSS REFERENCES

Reading of election law prior to opening of polls, see 15 Del.C. § 4903.

LIBRARY REFERENCES

Elections ↩309.  
Westlaw Key Number Search: 144k309.  
C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5125, DE ST TI 15 § 5125

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**→§ 5126. Violations by officials; penalty**

Whoever, being a clerk of the peace, an official, or other individual as designated in this title, willfully violates this title in the performance of any duty imposed upon him or her for the violation of which no other punishment is provided by law, shall be fined not less than \$300 nor more than \$500 and may be imprisoned not more than 3 years.

20 Laws 1897, ch. 396, § 13; 27 Laws 1913, ch. 65, § 28; 57 Laws 1969, ch. 181, § 73; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

## NOTES OF DECISIONS

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## 1. In general

The primary election law (20 Del. Laws [1897] p. 375, c. 393) provides that every election officer or person having the custody of any document or evidence of any description directed by the act to be made, filed, or preserved, who is guilty of stealing, willfully destroying, mutilating, or defacing, falsifying, or fraudulently removing or secreting the same, shall be guilty of a misdemeanor. Held, that ballots cast at a primary election were "papers or evidence" required to be preserved and delivered to the sheriff by section 29, p. 391, so that the destruction, mutilation, etc., thereof would constitute an offense. State v. Tyre, 1907, 6 Penne. 343, 22 Del. 343, 67 A. 199. Elections ↪ 314

Under 19 Del. Laws, c. 39, § 40, making it a crime for an election inspector to permit any alteration of election documents in his custody, an inspector is guilty who is so careless in caring for them that he thereby enables some one else to make such alteration. State v. Brand, 1897, 16 Del. 459, 43 A. 263. Elections ↪ 314

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**→§ 5127. Bribery of person expecting to be election or registration officer; penalty**

Whoever bribes or attempts to bribe anyone expecting to hold any official position under the election or registration laws of this State, either as registrar, inspector, judge or otherwise, by giving money or the promise of money, office or the promise of office or position either under the state or federal government, to perform any service for any political party in this State or to favor any candidate for political office shall be fined not more than \$1,000 and may be imprisoned not more than 6 months.

19 Laws 1893, ch. 575.

CROSS REFERENCES

Bribery, see 11 Del.C. § 1201 et seq.

LIBRARY REFERENCES

Elections ↪316.  
 Westlaw Key Number Search: 144k316.  
 C.J.S. Elections § 332.

15 Del.C. § 5127, DE ST TI 15 § 5127

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**→§ 5128. Fraudulent voting; penalty**

Whoever, at any general or special election:

- (1) Falsely personates any elector or other person and votes or attempts or offers to vote in or upon the name of such elector or other person; or
- (2) Votes or attempts to vote in or upon the name of any other person whether living or dead or in or upon any false, assumed or fictitious name; or
- (3) Knowingly, willfully or fraudulently votes more than once for any candidate at any election for the same office; or
- (4) Votes or attempts or offers to vote in any election district without having a lawful right to vote therein, or to vote more than once or to vote in more than 1 election district; or
- (5) Having once voted, votes or attempts or offers to vote again; or
- (6) Fraudulently delivers or offers to an election officer more than a single ballot; or
- (7) Knowingly, willfully or fraudulently does any unlawful act to secure an opportunity for himself or herself or for any other person to vote,

shall be fined not less than \$50 or more than \$200, or imprisoned not less than 30 days or more than 2 years, or both.

19 Laws 1891, ch. 39, § 34; 50 Laws 1955, ch. 174, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪318.  
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## NOTES OF DECISIONS

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**→§ 5129. False entries by clerk of election**

Whoever, being a clerk of election or other election officer performing the duty of such clerk:

- (1) Willfully keeps a false poll list; or
- (2) Knowingly inserts in his or her poll list any false statement, or any name, statement, check, letter or mark, except as provided by law,

shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 35; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Official misconduct, generally, see 11 Del.C. § 1211.

LIBRARY REFERENCES

Elections ↪314.  
Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

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**→§ 5130. Failure of election officer to perform duties**

Whoever, being an election officer, willfully:

- (1) Excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election; or
- (2) Receives a vote from any person who has been duly challenged in relation to such person's right to vote at such election without exacting from such person such oath or other proof of qualification as may be required by law; or
- (3) Omits to challenge any person offering to vote whom he or she knows or suspects not to be entitled to vote and who has not been challenged by any other person;

shall be deemed to have violated his official duty.

19 Laws 1891, ch. 39, § 36; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

CROSS REFERENCES

Official misconduct, generally, see 11 Del.C. § 1211.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5130, DE ST TI 15 § 5130

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**→§ 5131. False count or certification by election officer**

Whoever, being an election officer, willfully:

- (1) Makes any false count of votes cast at any election, or makes, signs, publishes or delivers any false return of such election or any false certificate or statement of the result of such election, knowing the same to be false; or
- (2) Defaces, destroys or conceals any statement or certificate entrusted to his or her care or custody

shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 37; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.  
Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

15 Del.C. § 5131, DE ST TI 15 § 5131

Current through 75 Laws 2006, ch. 441.  
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**→§ 5132. Fraudulent deposit or alteration of ballots or entering voting machine booth or casting vote; penalty**

(a) Whoever, being an election officer, at any election:

(1) Knowingly and willfully puts or causes to be put any ballot or ballots or other paper having the semblance thereof into any box used at such election for the reception of votes; or

(2) Knowingly and willfully causes or permits any ballot to be in the ballot box at the opening of the polls and before voting shall have commenced; or

(3) Knowingly or willfully or fraudulently puts any ballot or other paper having the semblance thereof into any ballot box unless the same is offered by an elector and the elector's name has been found and checked upon the Election District Record; or

(4) Fraudulently before, during or after the reading and count of the ballot, in any manner changes, substitutes or alters any ballot; or

(5) Removes any ballot or semblance thereof from, or adds any ballot or semblance thereof to, the ballots found in any such ballot box upon the closing of the polls; or

(6) Knowingly and willfully causes or permits any vote to be registered on a voting machine, unless the vote is cast by an elector whose name has been found and checked upon the books of registered voters and who has not previously voted, or knowingly or willfully enters or permits anyone to enter a voting machine booth, unless the person is an elector whose name has been found or checked upon the books of registered voters and who has not previously voted or is an election officer or member or employee of the department of elections whose entrance into the voting machine booth is required by the provisions of this title,

shall be deemed to have knowingly and wilfully violated his or her official duty.

(b) Whoever, not being an election officer, does or causes to be done any of the acts, matters or things mentioned in subsection (a) of this section, shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 38; 49 Laws 1953, ch. 18, § 3; 50 Laws 1955, ch. 174, § 2;

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**→§ 5133. Wilful neglect of duty by election officers**

Whoever, being an election officer of whom any duty is required in this title, is guilty of any wilful neglect of such duty or of any corrupt or fraudulent conduct or practice in the execution of the same shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 39; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections 314.

Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

15 Del.C. § 5133, DE ST TI 15 § 5133

Current through 75 Laws 2006, ch. 441.

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**→§ 5134. Stealing, destroying or secreting records; penalty**

(a) Whoever, being an election officer having the custody of any registration records, or copy thereof, oath, return of votes, certificate, poll list or any paper, document, or evidence of any description, in this title directed to be made, filed or preserved:

(1) Steals, wilfully destroys, mutilates, defaces, falsifies, or fraudulently removes or secretes the whole or any part thereof; or

(2) Fraudulently makes any entry, erasure, or alteration therein, except as allowed and directed by this title; or

(3) Permits any other person to do so,

shall be deemed to have knowingly and wilfully violated his or her official duty.

(b) Whoever, not being an election officer and having such custody, does or commits any of the acts, matters or things mentioned in subsection (a) of this section, or whoever, not being an election officer, advises, procures or abets the commission of any of the acts mentioned in this section shall, for each such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, §§ 40, 41; 50 Laws 1955, ch. 174, § 3; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5134, DE ST TI 15 § 5134

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**→§ 5135. Perjury; subornation of perjury**

(a) Whoever is convicted of wilful false swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this title is guilty of perjury.

(b) Whoever willfully or corruptly instigates, advises, induces or procures any person to swear or affirm falsely, or attempts or offers so to do, is guilty of subornation of perjury, and shall suffer the punishment directed by law in cases of perjury.

19 Laws 1891, ch. 39, §§ 42, 43.

CROSS REFERENCES

Perjury and related offenses, see 11 Del.C. § 1221 et seq.

Perjury, constitutional provision, see Del. Const. Art. 5, § 3.

LIBRARY REFERENCES

Elections ↪309.  
Westlaw Key Number Search: 144k309.  
C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5135, DE ST TI 15 § 5135

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**→§ 5136. Tampering with ballots or deceiving voters; penalty**

Whoever:

(1) Fraudulently changes or alters the ballot of any elector, or substitutes 1 ballot for another, or fraudulently furnishes any elector with a ballot containing more than the proper number of names; or

(2) Intentionally practices any fraud upon any elector to induce the elector to deposit a ballot as his or her vote and to have the same thrown out and not counted, or to have the same counted for a person or candidate other than the person or candidate for whom such elector intended to vote; or

(3) Otherwise defrauds the elector of the elector's vote,

shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 44; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪318.  
 Westlaw Key Number Search: 144k318.  
 C.J.S. Elections § 331.

15 Del.C. § 5136, DE ST TI 15 § 5136

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**→§ 5137. Disobeying election officers; penalty**

Whoever willfully disobeys any lawful command of any election officer, given in the execution of such officer's duty as such at any election, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

19 Laws 1891, ch. 39, § 45; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪309.  
 Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

15 Del.C. § 5137, DE ST TI 15 § 5137

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**→§ 5138. Breach of peace or violence on election day; penalty**

Whoever on any day of election or during the reading and counting of the votes cast thereat causes any breach of the peace or uses any violence or threats of violence whereby any such election or reading and counting of ballots is impeded or hindered or whereby the lawful proceedings of election officers or challengers at such election are interfered with shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 46.

CROSS REFERENCES

Criminal mischief, see 11 Del.C. § 811.

Disorderly conduct, see 11 Del.C. § 1301.

LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

15 Del.C. § 5138, DE ST TI 15 § 5138

Current through 75 Laws 2006, ch. 441.

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**→§ 5139. Interference with election officer or challenger; penalty**

Whoever:

(1) Knowingly or wilfully obstructs, hinders, assaults or by bribery, solicitation or otherwise interferes with any election officer or challenger in the performance of any duty required of him or her or which he or she may by law be authorized or permitted to perform; or

(2) By any means before mentioned or otherwise unlawfully on the day of election hinders or prevents any election officer or challenger in his or her free attendance and presence at the place of election in the election district in which he or she is appointed to serve, or in his or her full and free access and egress to and from any such place of election, or molests, interferes with, removes or ejects from any such place of election any such election officer or challenger, or unlawfully threatens or attempts or offers so to do,

shall be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 47; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

## NOTES OF DECISIONS

**In general 1**

## 1. In general

The offense, defined by Const. art. 5, § 7, of causing or attempting to cause any officer of election to violate his official duty, is not one of an attempt to commit a particular crime, but is a distinct substantive offense. State v. Burris, 1916, 6 Boyce 166, 29 Del. 166, 97 A. 427. Elections ↪ 319

15 Del.C. § 5139, DE ST TI 15 § 5139

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**→§ 5140. Failure of inspector to preserve order**

Whoever, being an inspector of election, wilfully neglects or when called on wilfully declines to exercise the powers conferred on him or her to preserve order shall be deemed to have knowingly and wilfully violated his or her official duty.

19 Laws 1891, ch. 39, § 48; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

LIBRARY REFERENCES

Elections ↪314.

Westlaw Key Number Search: 144k314.  
C.J.S. Elections § 327.

15 Del.C. § 5140, DE ST TI 15 § 5140

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**→§ 5141. Stealing or destroying ballot box, ballot, poll list; penalty**

Whoever, not being an election officer:

- (1) Steals or willfully breaks or destroys any ballot box used or intended to be used at any election; or
- (2) Willfully or fraudulently conceals, secretes or removes any ballot box from the custody of the election officers; or
- (3) Alters, defaces, injures, destroys or conceals any ballot or envelope which has been deposited in any ballot box at such election or any poll list used or intended to be used at such election or any report, return, certificate or other evidence in this title required or provided for;

shall, for each such offense, be fined not more than \$200 or imprisoned not more than 2 years, or both.

19 Laws 1891, ch. 39, § 49; 27 Laws 1913, ch. 65.

## LIBRARY REFERENCES

Elections ↪309.

Westlaw Key Number Search: 144k309.

C.J.S. Elections §§ 324, 355(2).

## NOTES OF DECISIONS

**In general 1**

## 1. In general

Under an indictment charging defendant with having destroyed ballots, where the evidence is purely circumstantial, in order to convict the jury should be satisfied from the proof that the ballots could have disappeared in no other reasonable way than by the destruction alleged. *State v. Mundy*, 1895, 16 Del. 429, 43 A. 260. Elections ↪ 329

An indictment alleging that defendant "did then and there unlawfully destroy

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**→§ 5142. Requiring unauthorized oath; penalty**

Whoever, being an election officer or other person, administers or causes to be administered to any legal voter any oath or affirmation not authorized by the Constitution or laws of this State for that purpose as a prerequisite or condition of voting at any election, except when such oath or affirmation is administered in order to satisfy such election officer or other person that such vote is a legal vote according to the Constitution and laws of this State, shall for each such offense be fined not less than \$500 nor more than \$1,000 and imprisoned 10 days.

12 Laws 1861-1865, ch. 326, § 3.

LIBRARY REFERENCES

Elections ↪314.  
 Westlaw Key Number Search: 144k314.  
 C.J.S. Elections § 327.

15 Del.C. § 5142, DE ST TI 15 § 5142

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**→§ 5143. Candidate for General Assembly not to make written pledge;  
 penalty**

(a) No candidate for State Senator or Representative in the General Assembly shall make any written pledge to give or withhold his or her vote on any proposed law or legislation, nor shall any other person seek to influence any such candidate in the candidate's attitude upon any proposed law or legislation by offer or promise of a vote or votes or of any support at any primary or election.

(b) Whoever violates subsection (a) of this section shall be fined not less than \$50 nor more than \$1,000, or imprisoned not less than 1 month nor more than 2 years, or both.

29 Laws 1917, ch. 112; 30 Laws 1919, ch. 105; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections k311.1.  
 Westlaw Key Number Search: 144k311.1.  
 C.J.S. Elections § 324.

15 Del.C. § 5143, DE ST TI 15 § 5143

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**→§ 5144. Unauthorized release of absentee vote information; penalty**

(a) Any person who knowingly or intentionally releases, transfers, distributes, or otherwise permits or facilitates the distribution of information relating to the number of absentee votes cast in favor or against any particular candidate or measure prior to the close of the polls on the day of an election at which absentee votes were cast and counted is guilty of the unauthorized release of absentee vote information in the first degree and shall be fined not less than \$300 nor more than \$500 and may be imprisoned not less than 1 nor more than 2 years.

(b) Any person who recklessly releases, transfers, distributes, or otherwise permits or facilitates the distribution of information relating to the number of absentee votes cast in favor or against any particular candidate or measure prior to the close of the polls on the day of an election at which absentee votes were cast and counted is guilty of the unauthorized release of absentee vote information in the second degree and shall be fined not more than \$200 and may be imprisoned not more than 1 year.

75 Laws 2005, ch. 149, § 3, eff. July 12, 2005.

## HISTORICAL AND STATUTORY NOTES

75 Laws 2005, ch. 149, § 4, eff. July 12, 2005, provides:

"This Act shall become effective upon its enactment into law. Not later than 6 months following the enactment of this Act into law, the Attorney General, the State Election Commissioner, and the departments of elections for each county shall each promulgate those regulations which are necessary to implement their respective responsibilities under this Act."

15 Del.C. § 5144, DE ST TI 15 § 5144

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**→§ 5161. Intimidation of election officers; penalty**

If any person, firm, corporation or employer existing or doing business in this State, hinders, coerces or intimidates or attempts to hinder, coerce or intimidate any person who has been appointed an election officer under the laws of this State from qualifying and performing such person's duties as such by threats of depriving such person of employment or occupation, absolutely or contingently, directly or indirectly, shall be liable to a penalty of \$500, recoverable by the Attorney General by civil action in any court of competent jurisdiction in the name of the State, and for the use and benefit of this State.

45 Laws 1945, ch. 144, § 24; 45 Laws 1945, ch. 148, § 24; 45 Laws 1945, ch. 149, § 24; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## CROSS REFERENCES

Election offenses, constitutional provisions, see Del. Const. Art. 5, §§ 7 to 9

Voting, registration, and elections, see Del. Const. Art. 5, § 1 et seq.

## LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

## RESEARCH REFERENCES

**Treatises and Practice Aids**

**Termination of Employment § 10:25, Miscellaneous.**

**15 Del.C. § 5161, DE ST TI 15 § 5161**

**Current through 75 Laws 2006, ch. 441.**

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**→§ 5162. Intimidation of electors; penalty**

If any person, or corporation existing or doing business in this State, hinders, controls, coerces or intimidates or attempts to hinder, control, coerce or intimidate any qualified elector of this State from or in the exercise of the elector's right to vote at any general, special or municipal election held under the laws of this State, by means of bribery or by threats of depriving such elector of employment or occupation, absolutely or contingently, directly or indirectly, every elector so aggrieved may, in a civil action brought for that purpose, sue for and recover from the person or corporation so offending the sum of \$500.

16 Laws 1881, ch. 329, §§ 1, 2; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

## LIBRARY REFERENCES

Elections ↪320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections §§ 333, 334(2).

## RESEARCH REFERENCES

**Treatises and Practice Aids****Employment Law § 5.11, Defenses.****Termination of Employment § 10:25, Miscellaneous.**

## NOTES OF DECISIONS

**In general 1**

## 1. In general

The Cape Henlopen School District did not violate any criminal statutes when it offered a free pizza party for the school with the documented highest percentage of students whose parents voted in a district referendum. Nor did an alleged \$5000 donation to Cape that paid for Cape's support of the referendum violate Delaware's

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**→§ 5163. Liability of corporation or officers**

In any trial under § 5161 or 5162 of this title, the acts of any officer of a corporation, insofar as they affect or concern an employee or servant of such corporation, shall be taken and held to be the acts of the corporation, whether general or special authority as to such acts from the corporation is shown or not.

Nothing contained in § 5161 or 5162 of this title or in this section shall be construed to relieve any officer of a corporation from individual liability under such sections.

16 Laws 1881, ch. 329, §§ 1, 2; 45 Laws 1945, ch. 147, § 24; 45 Laws 1945, ch. 148, § 24; 45 Laws 1945, ch. 149, § 24.

## LIBRARY REFERENCES

Elections ↪322.

Westlaw Key Number Search: 144k322.

C.J.S. Elections § 336.

15 Del.C. § 5163, DE ST TI 15 § 5163

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**→§ 5164. Liability of stakeholder for paying election bet**

If any stakeholder, or person with whom any money or thing, laid as a wager or bet on the result of any election, or on the election or defeat of any candidate or person voted for thereat, shall be deposited, shall at any time either before or after such bet shall have been decided, pay over or deliver to either or both of the persons betting the same, or to any other person by the order or for the use of them, or either of them, the money or thing so illegally betted, every such stakeholder or depository shall forfeit and pay to any person who will sue for the same, double the amount of such wager or bet or double the value of the thing betted.

Either of the persons betting shall be competent witnesses against the stakeholder.

## LIBRARY REFERENCES

Elections ↪315.

Westlaw Key Number Search: 144k315.

C.J.S. Elections § 328.

## RESEARCH REFERENCES

**Encyclopedias****15 Am. Jur. Trials 1, Unfair Election Campaign Practices.****15 Del.C. § 5164, DE ST TI 15 § 5164****Current through 75 Laws 2006, ch. 441.****Revisions to Acts from the Second Regular Session 143rd General Assembly made by the Delaware Code Revisors were unavailable at time of publication.****Copr. 2006 Thomson/West.****END OF DOCUMENT**



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Chapter 10. Elections. (Refs & Annos)

Subchapter I. Regulation of Elections.

**→ § 1-1001.12. Interference with registration and voting.**

No one shall interfere with the registration or voting of another person, except as it may be reasonably necessary in the performance of a duty imposed by law.

CREDIT(S)

(Aug. 12, 1955, 69 Stat. 703, ch. 862, § 12.)

**HISTORICAL AND STATUTORY NOTES**

**Prior Codifications**

1981 Ed., § 1-1316.

1973 Ed., § 1-1112.

**LIBRARY REFERENCES**

**Key Numbers**

Elections ↪ 319.

Westlaw Topic No. 144.

**Encyclopedias**

C.J.S. Elections § 330.

DC CODE § 1-1001.12

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DC ST § 1-1001.14

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Formerly cited as DC ST 1981 § 1-1318

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☐ Subchapter I. Regulation of Elections.

**→ § 1-1001.14. Corrupt election practices.**

(a) Any person who shall register, or attempt to register, or vote or attempt to vote under the provisions of this subchapter and make any false representations as to his or her qualifications for registering or voting or for holding elective office, or be guilty of violating § 1-1001.07(d)(2)(D), § 1-1001.09, § 1-1001.12, or § 1-1001.13 or be guilty of bribery or intimidation of any voter at an election, or being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in an election, or attempt to vote in an election held by a political party other than that to which he or she has declared himself or herself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this subchapter, knowingly make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of Chapter 11 of this title, shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

(b)(1) Any person who signs an initiative, referendum or recall petition with any other than his or her own name, or who signs a petition for an initiative, referendum or recall measure, knowing that he or she is not a registered qualified elector in the District of Columbia, or who makes a false statement as to his or her residency on any such petition, shall upon conviction be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(2) Any public officer, involved in any part of the election process, who willfully violates any of the provisions of § 1-1001.16 or § 1-1001.17, shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(3) Any person who: (A) For any consideration, compensation, gratuity, reward or thing of value or promise thereof, signs or promises to sign or declines to sign, or promises not to sign any initiative, referendum, or recall petition; or (B) pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, his or her signatures upon any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on, any initiative, referendum, or recall measure; or (C) by any other corrupt means or practice, or by threats or intimidation, interferes with, or attempts to interfere with, the right of any qualified registered elector to sign or not to sign any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on any initiative, referendum, or recall measure; or (D) makes any false statement to the Board concerning any initiative, referendum, or recall petition, or the signatures appended thereto shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(4) Any proposer or circulator of an initiative, referendum, or recall petition who willfully violates any provision of §§ 1-1001.16 and 1-1001.17 shall, upon conviction thereof, be subject to a fine of not more than \$10,000 or to imprisonment of not more than 6 months, or both. Each occurrence of a violation of §§ 1-1001.16 and 1-1001.17

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## DC ST § 1-1001.14

shall constitute a separate offense. Violations of §§ 1-1001.16 and 1-1001.17 shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c) The provisions of this section shall be supplemental to, and not in derogation of, any penalties under other laws of the District of Columbia.

## CREDIT(S)

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(k); Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 2(b), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(i), (n), (o), (q), 29 DCR 458; Sept. 22, 1994, D.C. Law 10-173, § 2(f), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(d), 42 DCR 1547.)

## HISTORICAL AND STATUTORY NOTES

**Prior Codifications**

1981 Ed., § 1-1318.

1973 Ed., § 1-1114.

**Legislative History of Laws**

For legislative history of D.C. Law 1-37, see Historical and Statutory Notes following § 1-1001.05.

For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 1-1001.02.

## CROSS REFERENCES

Election campaigns, lobbying, and conflicts of interest, violation of laws, prosecutions, see § 1-1107.01.

**Section References**

This section is referred to in §§ 1-1001.02, and 1-1001.07.

## LIBRARY REFERENCES

**Key Numbers**

Elections ↪ 312, 313, 316 to 320, 323.  
Westlaw Topic No. 144.

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DC ST § 1-1001.15

**C**

Formerly cited as DC ST 1981 § 1-1319

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 1. Government Organization. (Refs &amp; Annos)

<sup>Ⓜ</sup> Chapter 10. Elections. (Refs & Annos)        <sup>Ⓜ</sup> Subchapter I. Regulation of Elections.

**→ § 1-1001.15. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.**

(a) No person shall be a candidate for more than 1 office on the Board of Education or the Council or Mayor in any election for the members of the Board of Education or the Council or Mayor, and no person shall be a candidate for more than 1 office on the Council or for the Mayor in any primary election. If a person is nominated for more than 1 such office, he or she shall, within 3 days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such 3-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of subsection (a) of this section, a person holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board certifies said person's election, pursuant to subsection (a)(11) of § 1-1001.05, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected.

## CREDIT(S)

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 15; as added Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(9); Dec. 24, 1973, 87 Stat. 835, Pub. L. 93-198, title VII, § 751(9), (10); Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(j), (o), (q), 29 DCR 458; Mar. 14, 1985, D.C. Law 5-159, § 22, 32 DCR 30.)

## HISTORICAL AND STATUTORY NOTES

**Prior Codifications**

1981 Ed., § 1-1319.

1973 Ed., § 1-1115.

**Legislative History of Laws**

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West's F.S.A. § 104.011

C

Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

→ **104.011. False swearing; submission of false voter registration information**

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1868, c. 1637, subc. 12 § 1; Rev.St.1892, § 2786; Gen.St.1906, § 3828; Rev.Gen.St.1920, § 5891; Comp.Gen.Laws 1927, § 8154; Laws 1931, c. 14715, § 15; Comp.Gen.Laws Supp.1936, § 8202 (6); Fla.St.1949, §§ 103.15, 875.14; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 19; Laws 1977, c. 77-175, § 33. Amended by Laws 1994, c. 94-224, § 38, eff. Jan. 1, 1995; Laws 1997, c. 97-13, § 31, eff. Jan. 1, 1998.

CROSS REFERENCES

Qualification and registration of electors, applications, signature and oath, see § 97.053.

Perjury, see § 837.011 et seq.

Uniform statewide voter registration application, see § 97.052.

Uniform statewide voter registration application, signature of applicant, see § 97.052.

LAW REVIEW AND JOURNAL COMMENTARIES

History of corrupt practices acts. J. V. Keen, 9 Fla.L.J. 297 (1935).

LIBRARY REFERENCES

2002 Main Volume

Elections ↻318, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 331, 353.

RESEARCH REFERENCES

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West's F.S.A. § 104.012

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.012. Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application**

(1) Any person who gives anything of value that is redeemable in cash to any person in consideration for his or her becoming a registered voter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration or baby-sitting in connection with the absence of an elector from home for registering.

(2) A person who by bribery, menace, threat, or other corruption, directly or indirectly, influences, deceives, or deters or attempts to influence, deceive, or deter any person in the free exercise of that person's right to register to vote at any time, upon the first conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and, upon any subsequent conviction, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person may not solicit or pay another person to solicit voter registrations for compensation that is based upon the number of registrations obtained. A person who violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who alters the voter registration application of any other person, without the other person's knowledge and consent, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1963, c. 63-198, § 1; Laws 1971, c. 71-136, § 20; Laws 1977, c. 77-175, § 33. Amended by Laws 1994, c. 94-224, § 39, eff. Jan. 1, 1995; Laws 1995, c. 95-147, § 1394, eff. July 10, 1995; Laws 1997, c. 97-13, § 32, eff. Jan. 1, 1998; Laws 1998, c. 98-129, § 23, eff. July 1, 1998.

**CROSS REFERENCES**

Registration to vote, see § 97.041 et seq.

**LIBRARY REFERENCES**

2002 Main Volume

Elections ↪316, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 332, 353.

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West's F.S.A. § 104.013

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C

Effective: January 01, 2006

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

## → 104.013. Unauthorized use, possession, or destruction of voter information card

- (1) It is unlawful for any person knowingly to have in his or her possession any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued voter information card unless possession by such person has been duly authorized by the supervisor.
- (2) It is unlawful for any person to barter, trade, sell, or give away a voter information card unless said person has been duly authorized to issue a voter information card.
- (3) It is unlawful for any person willfully to destroy or deface the information card of a duly registered voter.
- (4) Any person who violates any of the provisions of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1976, c. 76-49, § 1; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-175, § 34; Laws 1991, c. 91-224, § 3. Amended by Laws 1994, c. 94-224, § 40, eff. Jan. 1, 1995; Laws 1995, c. 95-147, § 1395, eff. July 10, 1995; Laws 1998, c. 98-129, § 24, eff. July 1, 1998; Laws 2005, c. 2005-278, § 44, eff. Jan. 1, 2006.

## HISTORICAL AND STATUTORY NOTES

## Amendment Notes:

Laws 2005, c. 2005-278, § 44, substituted references to voter information cards for references to voter registration identification cards throughout.

## CROSS REFERENCES

Registration identification card, see § 97.071.

## LIBRARY REFERENCES

2002 Main Volume

Elections ⇨ 312, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 326, 353.

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West's F.S.A. § 104.031

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.031. False declaration to secure assistance in preparing ballot**

Any person who makes a false declaration for assistance in voting, or in the preparation of his or her ballot, in any election is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1895, c. 4328, § 49; Gen.St.1906, § 3829; Rev.Gen.St.1920, § 5892; Comp.Gen.Laws 1927, § 8156; Fla.St.1949, § 99.31; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 22; Laws 1977, c. 77-175, § 35; Laws 1991, c. 91-224, § 4. Amended by Laws 1995, c. 95-147, § 613, eff. July 10, 1995.

**CROSS REFERENCES**

Assistance in casting ballot, see § 101.051.

False swearing to qualifications, see § 104.011.

**LIBRARY REFERENCES**

**2002 Main Volume**

Elections ↔ 318, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 331, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 190, False Swearing or Declaration.

West's F. S. A. § 104.031, FL ST § 104.031

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.041

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

▪ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.041. Fraud in connection with casting vote**

Any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1943, c. 22014, § 4; Laws 1949, c. 25385, § 1; Fla.St.1949, § 101.14; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 23; Laws 1977, c. 77-175, § 35.

**HISTORICAL AND STATUTORY NOTES****Amendment Notes:**

Former § 101.14 was repealed and a new § 101.14 substituted by Laws 1949, c. 25385, § 1. The new § 101.14, was revised and renumbered as this section by Laws 1951, c. 26870, § 8.

**LIBRARY REFERENCES****2002 Main Volume**

Elections ↪318, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 331, 353.

**RESEARCH REFERENCES****Encyclopedias**

FL Jur. 2d Elections § 203, Undue Influence on Election Process; Threats; Fraud; Bribery.

West's F. S. A. § 104.041, FL ST § 104.041

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.045

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West's Florida Statutes Annotated Currentness  
Title IX. Electors and Elections (Chapters 97-109)  
    § Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.045. Vote selling**

Any person who:

- (1) Corruptly offers to vote for or against, or to refrain from voting for or against, any candidate in any election in return for pecuniary or other benefit; or
- (2) Accepts a pecuniary or other benefit in exchange for a promise to vote for or against, or to refrain from voting for or against, any candidate in any election,

is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1981, c. 81-107, § 1. Amended by Laws 1998, c. 98-129, § 25, eff. July 1, 1998; Laws 2005, c. 2005-278, § 31, eff. Jan. 1, 2006.

**LIBRARY REFERENCES**

2002 Main Volume

- Elections ↪332.
- Westlaw Topic No. 144.
- C.J.S. Elections § 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

West's F. S. A. § 104.045, FL ST § 104.045

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.047

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Effective: January 01, 2006

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

## → 104.047. Absentee ballots and voting; violations

(1) Except as provided in s. 101.62 or s. 101.655, any person who requests an absentee ballot on behalf of an elector is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who marks or designates a choice on the ballot of another person, except as provided in s. 101.051, s. 101.655, or s. 101.661, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Added by Laws 1998, c. 98-129, § 26, eff. July 1, 1998. Amended by Laws 1999, c. 99-2, § 34, eff. June 29, 1999; Laws 2001, c. 2001-40, § 57, eff. Jan. 1, 2002; Laws 2005, c. 2005-278, § 54, eff. Jan. 1, 2006.

## LIBRARY REFERENCES

2002 Main Volume

Elections ↪ 132, 317.

Westlaw Topic No. 144.

C.J.S. Elections §§ 101, 329.

## RESEARCH REFERENCES

## Encyclopedias

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

## NOTES OF DECISIONS

## Violations 1

## 1. Violations

Violations of the election code by election officials will not necessarily invalidate the votes of innocent electors. *Jacobs v. Seminole County Canvassing Bd.*, 773 So.2d 519 (2000). Elections ↪ 227(1)

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West's F.S.A. § 104.051

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.051. Violations; neglect of duty; corrupt practices**

(1) Any official who willfully violates any of the provisions of this election code shall be excluded from the polls. Any election official who is excluded shall be replaced as provided in this code.

(2) Any official who willfully refuses or willfully neglects to perform his or her duties as prescribed by this election code is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any official who performs his or her duty as prescribed by this election code fraudulently or corruptly is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any supervisor, deputy supervisor, or election employee who attempts to influence or interfere with any elector voting a ballot commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1847, c. 71, § 7; Rev.St.1892, § 205; Laws 1895, c. 4328, §§ 30, 57, 62; Laws 1897, c. 4537, § 10; Laws 1899, c. 4699, § 3; Gen.St.1906, §§ 215, 289, 3819, 3824, 3825; Laws 1909, c. 5929, § 17; Rev.Gen.St.1920, §§ 259, 385, 5880, 5886, 5888; Comp.Gen.Laws 1927, §§ 315, 450, 8143, 8149, 8151; Laws 1931, c. 14715, § 16; Comp.Gen.Laws Supp.1936, § 8151(1); Laws 1937, c. 18407, § 4; Comp.Gen.Laws Supp.1940, § 7476; Laws 1943, c. 22018, §§ 3-E, 4, 7, 8, 11; Fla.St.1949, §§ 99.13, 100.37, 100.46, 100.47, 103.16, 105.02, 875.08, 875.10, 875.11; Laws 1951, c. 26870, § 8; Laws 1953, c. 28156, § 42; Laws 1971, c. 71-136, § 24; Laws 1977, c. 77-175, § 35; Laws 1990, c. 90-315, § 21. Amended by Laws 1995, c. 95-147, § 614, eff. July 10, 1995; Laws 1998, c. 98-129, § 27, eff. July 1, 1998.

**CROSS REFERENCES**

Duties of supervisor of elections, failure to administer voter registration database, see § 98.0977.

Electors and elections, registration list maintenance programs, see § 98.065.

Electors and elections, registration office, officers and procedures, other registration list maintenance activities, see § 98.075.

False declaration to secure assistance in preparing ballot, penalty, see § 104.031.

False swearing to elector's qualifications, penalty, see § 104.011.

**LAW REVIEW AND JOURNAL COMMENTARIES**

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West's F.S.A. § 104.0515

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Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness  
 Title IX. Electors and Elections (Chapters 97-109)  
 Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

→ **104.0515. Voting rights; deprivation of, or interference with, prohibited; penalty**

- (1) All citizens of this state who are otherwise qualified by law to vote at any election by the people in this state or in any district, county, city, town, municipality, school district, or other subdivision of this state shall be entitled and allowed to vote at all such elections without distinction according to race, color, or previous condition of servitude, notwithstanding any law, ordinance, regulation, custom, or usage to the contrary.
- (2) No person acting under color of law shall:
- (a) In determining whether any individual is qualified under law to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under law to other individuals within the same political subdivision who have been found to be qualified to vote; or
- (b) Deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under law to vote in such election. This paragraph shall apply to absentee ballots only if there is a pattern or history of discrimination on the basis of race, color, or previous condition of servitude in regard to absentee ballots.
- (3) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose, or for the purpose of causing such other person to vote for, or not vote for, any candidate for any office at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.
- (4) No voting qualification or prerequisite to voting, and no standard, practice, or procedure, shall be imposed or applied by any political subdivision of this state to deny or abridge the right of any citizen to vote on account of race or color.
- (5) Any person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1982, c. 82-59, § 1; Laws 1983, c. 83-217, § 26; Laws 1991, c. 91-224, § 5. Amended by Laws 1995, c. 95-147, § 615, eff. July 10, 1995; Laws 1998, c. 98-129, § 28, eff. July 1, 1998.

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West's F.S.A. § 104.061

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.061. Corruptly influencing voting**

(1) Whoever by bribery, menace, threat, or other corruption whatsoever, either directly or indirectly, attempts to influence, deceive, or deter any elector in voting or interferes with him or her in the free exercise of the elector's right to vote at any election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 for the first conviction, and a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any subsequent conviction.

(2) No person shall directly or indirectly give or promise anything of value to another intending thereby to buy that person's or another's vote or to corruptly influence that person or another in casting his or her vote. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, this subsection shall not apply to the serving of food to be consumed at a political rally or meeting or to any item of nominal value which is used as a political advertisement, including a campaign message designed to be worn by a person.

**CREDIT(S)**

Laws 1868, c. 1637, subc. 12, § 3; Rev.St.1892, § 2783; Laws 1895, c. 4328, § 50; Gen.St.1906, §§ 3814, 3826; Laws 1909, c. 5929, § 15; Laws 1913, c. 6470, §§ 1, 3, 6 to 8; Rev.Gen.St.1920, §§ 5874, 5889, 5908, 5918, 5921 to 5923; Comp.Gen.Laws 1927, §§ 8137, 8152, 8172, 8182, 8185 to 8187; Laws 1939, c. 19617, § 1; Comp.Gen.Laws 1940, Supp.1940, § 8182; Laws 1941, c. 20934, § 1; Laws 1945, c. 22858, § 7; Fla.St.1949, §§ 102.61, 875.02, 875.12, 875.27, 875.34, 875.35, 875.36; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 1; Laws 1971, c. 71-136, § 25; Laws 1977, c. 77- 175, § 35; Laws 1979, c. 79-400, § 51; Laws 1981, c. 81-304, § 21; Laws 1990, c. 90-315, § 22. Amended by Laws 1995, c. 95-147, § 616, eff. July 10, 1995; Laws 1998, c. 98-129, § 29, eff. July 1, 1998.

**CROSS REFERENCES**

Consideration for registration, see § 104.012.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Campaign finance law. 28 U.Fla.L.Rev. 458 (1976).

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031296

Westlaw.

Page 1

West's F.S.A. § 104.0615

C

Effective: July 01, 2005

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.0615. Voter intimidation or suppression prohibited; criminal penalties**

- (1) This section may be cited as the "Voter Protection Act."
- (2) A person may not directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to:
- (a) Vote or refrain from voting;
  - (b) Vote or refrain from voting for any particular individual or ballot measure;
  - (c) Refrain from registering to vote; or
  - (d) Refrain from acting as a legally authorized election official or poll watcher.
- (3) A person may not knowingly use false information to:
- (a) Challenge an individual's right to vote;
  - (b) Induce or attempt to induce an individual to refrain from voting or registering to vote; or
  - (c) Induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.
- (4) A person may not knowingly destroy, mutilate, or deface a voter registration form or election ballot or obstruct or delay the delivery of a voter registration form or election ballot.
- (5) A person who violates subsection (2), subsection (3), or subsection (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Added by Laws 2005, c. 2005-277, § 76, eff. July 1, 2005.

## HISTORICAL AND STATUTORY NOTES

**Amendment Notes:**

Laws 2005, c. 2005-277, § 78, provides:

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West's F.S.A. § 104.0616

**Effective: January 01, 2006**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.0616. Absentee ballots and voting; violations**

Any person who provides or offers to provide, and any person who accepts, a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots, with intent to alter, change, modify, or erase any vote on the absentee ballot, except as provided in ss. 101.6105-101.695, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 2005, c. 2005-278, § 53, eff. Jan. 1, 2006.

West's F. S. A. § 104.0616, FL ST § 104.0616

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.071

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.071. Remuneration by candidate for services, support, etc.; penalty**

(1) It is unlawful for any person supporting a candidate, or for any candidate, in order to aid or promote the nomination or election of such candidate in any election, directly or indirectly to:

(a) Promise to appoint another person, promise to secure or aid in securing appointment, nomination or election of another person to any public or private position, or to any position of honor, trust, or emolument, except one who has publicly announced or defined what his or her choice or purpose in relation to any election in which he or she may be called to take part, if elected.

(b) Give, or promise to give, pay, or loan, any money or other thing of value to the owner, editor, publisher, or agent, of any communication media, as well as newspapers, to advocate or oppose, through such media, any candidate for nomination in any election or any candidate for election, and no such owner, editor, or agent shall give, solicit, or accept such payment or reward. It shall likewise be unlawful for any owner, editor, publisher, or agent of any poll-taking or poll-publishing concern to advocate or oppose through such poll any candidate for nomination in any election or any candidate for election in return for the giving or promising to give, pay, or loan any money or other thing of value to said owner, editor, publisher, or agent of any poll-taking or poll-publishing concern.

(c) Give, pay, expend, or contribute any money or thing of value for the furtherance of the candidacy of any other candidate.

(d) Furnish, give, or deliver to another person any money or other thing of value for any purpose prohibited by the election laws.

This subsection shall not prohibit a candidate from furnishing complimentary tickets to the candidate's campaign fund raiser to other candidates.

(2) A candidate may give his or her own personal or business funds to another candidate, so long as the contribution is not given in exchange for a promise or expectation that the recipient will directly or indirectly do anything to aid or promote the candidacy of the contributor which the recipient would not have otherwise done.

(3) Any person who violates any provision of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, and from and after conviction shall be disqualified to hold office.

CREDIT(S)

Laws 1913, c. 6469, § 60; Laws 1913, c. 6470, §§ 5, 6, 11, 14, 15; Rev.Gen.St.1920, §§ 5916, 5920, 5921, 5926, 5929, 5930; Comp.Gen.Laws 1927, §§ 8180, 8184, 8185, 8190, 8193, 8194; Fla.St.1949, §§ 875.31, 875.33,

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West's F.S.A. § 104.081

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.081. Threats of employers to control votes of employees**

It is unlawful for any person having one or more persons in his or her service as employees to discharge or threaten to discharge any employee in his or her service for voting or not voting in any election, state, county, or municipal, for any candidate or measure submitted to a vote of the people. Any person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 27; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 618, eff. July 10, 1995; Laws 1998, c. 98-129, § 30, eff. July 1, 1998.

**HISTORICAL AND STATUTORY NOTES**

**Prior Laws:**

Fla.St.1949, §§ 875.22, 875.23.

Comp.Gen.Laws 1927, §§ 8165, 8166.

Rev.Gen.St.1920, §§ 5901, 5902.

Gen.St.1906, §§ 3839, 3840.

Laws 1901, c. 5016, §§ 1, 2, 3.

**LAW REVIEW AND JOURNAL COMMENTARIES**

History of corrupt practices acts. J. V. Keen, 9 Fla.L.J. 297 (1935).

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C.J.S. Elections §§ 333, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 203, Undue Influence on Election Process; Threats; Fraud; Bribery.

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West's F.S.A. § 104.091

**C**

**Effective: October 01, 2002**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.091. Aiding, abetting, advising, or conspiring in violation of the code**

(1) Any person who knowingly aids, abets, or advises the violation of this code shall be punished in like manner as the principal offender.

(2) Any person who agrees, conspires, combines, or confederates with another person to commit a violation of this code shall be punished as if he or she had committed the violation.

(3) Any person who knows of a felony violation of this code and gives any aid to the offender who has violated this code, with intent that the offender avoid or escape detection, arrest, trial, or punishment, shall be punished as if he or she had committed the violation. This subsection does not prohibit a member of The Florida Bar from giving legal advice to a client.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1967, c. 67-164, § 1; Laws 1971, c. 71-136, § 28; Laws 1977, c. 77-175, § 35. Amended by Laws 2002, c. 2002-214, § 1, eff. Oct. 1, 2002.

**HISTORICAL AND STATUTORY NOTES**

**Amendment Notes:**

Laws 2002, c. 2002-214, § 1 rewrote the section, which formerly read:

"Any person who shall knowingly aid, abet or advise the violation of this code shall be punished in like manner as the principal offender."

**Prior Laws:**

- Fla.St.1949, §§ 875.19 to 875.21.
- Comp.Gen.Laws 1927, §§ 8162 to 8164.
- Rev.Gen.St.1920, §§ 5898 to 5900.
- Gen.St.1906, §§ 3836 to 3838.
- Laws 1897, c. 4538, §§ 1, 2, 4, 5.

**CROSS REFERENCES**

Contribution limits, see § 106.08.

**LAW REVIEW AND JOURNAL COMMENTARIES**

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West's F.S.A. § 104.101

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Amos)

**→ 104.101. Failure to assist officers at polls**

Any person summoned by the sheriff or deputy sheriff who fails or refuses to assist him or her in maintaining the peace at the polls is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1889, c. 3879, § 27; Rev.St.1892, § 181; Laws 1895, c. 4328, § 58; Gen.St.1906, § 3834; Rev.Gen.St.1920, § 5896; Comp.Gen.Laws 1927, § 8160; Fla.St.1949, § 99.40; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 29; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 619, eff. July 10, 1995.

**LIBRARY REFERENCES**

2002 Main Volume

Elections ↪ 314, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 327, 353.

West's F. S. A. § 104.101, FL ST § 104.101

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West's F.S.A. § 104.11

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.11. Neglect of duty by sheriff or other officer**

Any sheriff, deputy sheriff, or other officer who willfully neglects or willfully refuses to perform his or her duties relating to elections is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 30; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 620, eff. July 10, 1995.

**HISTORICAL AND STATUTORY NOTES**

**Prior Laws:**

Fla.St.1949, § 875.07.  
Comp.Gen.Laws 1927, § 8142.  
Rev.Gen.St.1920, § 5879.  
Gen.St.1906, § 3818.  
Laws 1895, c. 4328, § 58.

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C.J.S. Elections §§ 327, 353.

West's F. S. A. § 104.11, FL ST § 104.11

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West's F.S.A. § 104.13

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.13. Intermingling ballots**

Whoever willfully places any ballot in the ballot box except as properly voted by electors, or willfully intermingles any other ballots which have not been duly received during the election with the ballots which are voted by the electors, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 3; Laws 1971, c. 71-136, § 32; Laws 1977, c. 77-175, § 35.

HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.13.

Comp.Gen.Laws 1927, § 8153.

Rev.Gen.St.1920, § 5890.

Gen.St.1906, § 3827.

Rev.St.1892, § 2785.

Laws 1868, c. 1637, subc. 12, § 7.

LIBRARY REFERENCES

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Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

West's F. S. A. § 104.13, FL ST § 104.13

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.15

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.15. Unqualified electors willfully voting**

Whoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1881, c. 3278, § 1; Rev.St.1892, § 2787; Gen.St.1906, § 3830; Laws 1909, c. 5929, § 14; Rev.Gen.St.1920, §§ 5893, 5907; Comp.Gen.Laws 1927, §§ 8157, 8171; Laws 1949, c. 25365, § 1; Fla.St.1949, §§ 875.15, 875.26; Prior Laws;; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 5; Laws 1971, c. 71-136, § 34; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95- 147, § 621, eff. July 10, 1995.

**CROSS REFERENCES**

Qualifications to register or vote, see § 97.041.

**LIBRARY REFERENCES**

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Elections ↩313, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 325, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

**NOTES OF DECISIONS**

**Construction and application 1**  
**Evidence 4**  
**Special or local laws 3**  
**Validity of elections 2**

1. Construction and application

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West's F.S.A. § 104.16

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

▣ Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.16. Voting fraudulent ballot**

Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**CREDIT(S)**

Laws 1895, c. 4328, § 36; Gen.Stat.1906, § 221; Laws 1913, c. 6469, § 42; Rev.Gen.St.1920, §§ 266, 346, 5911; Comp.Gen.Laws 1927, §§ 322, 403, 8175; Laws 1937, c. 17898, § 6; Laws 1937, c. 17901, § 3; Laws 1949, c. 25187, § 6; Laws 1949, c. 25386, § 4; Fla.St.1949, §§ 99.20, 102.41; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 6; Laws 1971, c. 71-136, § 35; Laws 1977, c. 77-175, § 35.

**LIBRARY REFERENCES**

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C.J.S. Elections §§ 76-77, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

West's F. S. A. § 104.16, FL ST § 104.16

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West's F.S.A. § 104.17

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**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.17. Voting in person after casting absentee ballot**

Any person who willfully votes or attempts to vote both in person and by absentee ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1943, c. 22014, § 1; Laws 1949, c. 25385, § 1; Fla.St.1949, § 101.11; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 7; Laws 1971, c. 71-136, § 36; Laws 1977, c. 77-175, § 35.

**HISTORICAL AND STATUTORY NOTES**

Former § 101.11 derived from Laws 1943, c. 22014, § 1 was repealed and a new § 101.11 substituted by Laws 1949, c. 25385, § 1. This new § 101.11 was subsequently revised and renumbered as this section by Laws 1951, c. 26870, § 8.

**CROSS REFERENCES**

Voting in person, return of absentee ballot, see § 101.69.

**LIBRARY REFERENCES**

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Elections ↪313, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 325, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 202, Offenses in Connection With Voting -- Illegal Voting.

West's F. S. A. § 104.17, FL ST § 104.17

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West's F.S.A. § 104.18

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

☐ Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.18. Casting more than one ballot at any election**

Whoever willfully votes more than one ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 8; Laws 1971, c. 71-136, § 37; Laws 1977, c. 77-175, § 35.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, §§ 875.15 to 875.17.

Laws 1949, c. 25365, §§ 1 to 3.

Comp.Gen.Laws 1927, §§ 8157, 8158, 8176.

Rev.Gen.St.1920, §§ 5893, 5894, 5912.

Laws 1913, c. 6469, § 56.

Gen.St.1906, §§ 3830, 3831.

Rev.St.1892, §§ 2787, 2788.

Laws 1881, c. 3278, § 1.

Laws 1868, c. 1637, subc. 12, § 6.

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## NOTES OF DECISIONS

**Validity of elections 1**

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West's F.S.A. § 104.185

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.185. Petitions; knowingly signing more than once; signing another person's name or a fictitious name**

(1) A person who knowingly signs a petition or petitions for a candidate, a minor political party, or an issue more than one time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who signs another person's name or a fictitious name to any petition to secure ballot position for a candidate, a minor political party, or an issue commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1977, c. 77-178, § 1; Laws 1991, c. 91-224, § 6. Amended by Laws 1997, c. 97-13, § 23, eff. Jan. 1, 1998.

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C.J.S. Elections §§ 329, 353.

RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

West's F. S. A. § 104.185, FL ST § 104.185

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West's F.S.A. § 104.19

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.19. Using stickers or rubber stamps or carrying certain items in voting booth; penalty**

(1)(a) It is unlawful for any person casting a ballot at any election to use stickers or rubber stamps or to carry into a voting booth any mechanical device, paper, or memorandum which might be used to affect adversely the normal election process.

(b) In casting a write-in ballot, the elector shall cast the same in his or her own handwriting or in the handwriting of an authorized person aiding him or her.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1949, c. 25187, § 7; Fla.St.1949, § 99.201; Laws 1951, c. 26870, § 8; Laws 1970, c. 70-136, § 1; Laws 1971, c. 71-136, § 39; Laws 1977, c. 77- 175, § 35; Laws 1981, c. 81-105, § 16. Amended by Laws 1995, c. 95-147, § 622, eff. July 10, 1995.

**CROSS REFERENCES**

Assistance in casting ballot, see § 101.051.

**LIBRARY REFERENCES**

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Elections ↪317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

**NOTES OF DECISIONS**

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West's F.S.A. § 104.20

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.20. Ballot not to be seen, and other offenses**

Any elector who, except as provided by law, allows his or her ballot to be seen by any person; takes or removes, or attempts to take or remove, any ballot from the polling place before the close of the polls; places any mark on his or her ballot by which it may be identified; endeavors to induce any elector to show how he or she voted; aids or attempts to aid any elector unlawfully; or prints or procures to be printed, or has in his or her possession, any copies of any ballot prepared to be voted is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1895, c. 4328, § 55; Laws 1897, c. 4536, § 2; Gen.St.1906, § 3835; Rev.Gen.St.1920, § 5897; Comp.Gen.Laws 1927, § 8161; Fla.St.1949, § 99.34; Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 40; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 623, eff. July 10, 1995; Laws 2002, c. 2002-281, § 19.

**HISTORICAL AND STATUTORY NOTES****Amendment Notes:**

Laws 2002, c. 2002-281, § 22, provides:

"Except as otherwise expressly provided in this act, this act shall take effect one year after the legislature adopts the general appropriations act specifically appropriating to the Department of State, for distribution to the counties, \$8.7 million or such other amounts as it determines and appropriates for the specific purpose of funding this act." [Line item 28711 of the 2004- 2005 General Appropriations Act appropriates \$11.6 million for distribution to the counties for one disability-compliant machine per polling place. For purposes of the effect of Laws 2002, c. 2002-281, one year after adoption of this appropriation would be July 1, 2005.]

**CROSS REFERENCES**

Assistance in casting ballot, see § 101.051.

Secret voting, see § 101.041.

Time allowed in voting booth, see § 101.51.

**LIBRARY REFERENCES**

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031310



West's F.S.A. § 104.21

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Amos)

**→ 104.21. Changing electors' ballots**

Whoever fraudulently changes or attempts to change the vote or ballot of any elector, by which actions such elector is prevented from voting such ballot or from voting such ballot as the elector intended, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 10; Laws 1971, c. 71-136, § 41; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 624, eff. July 10, 1995.

**HISTORICAL AND STATUTORY NOTES**

**Prior Laws:**

- Fla.St.1949, §§ 99.34, 875.03.
- Comp.Gen.Laws 1927, § 8138.
- Rev.Gen.St.1920, § 5875.
- Gen.St.1906, § 3815.
- Rev.St.1892, § 2784.
- Laws 1868, c. 1637, subc. 12, § 5.

**LIBRARY REFERENCES**

2002 Main Volume

- Elections ↻317, 332.
- Westlaw Topic No. 144.
- C.J.S. Elections §§ 329, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

**NOTES OF DECISIONS**

**Construction and application 1**

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West's F.S.A. § 104.22

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.22. Stealing and destroying records, etc., of election**

Any person who is guilty of stealing, willfully and wrongfully breaking, destroying, mutilating, defacing, or unlawfully moving or securing and detaining the whole or any part of any ballot box or any record tally sheet or copy thereof, returns, or any other paper or document provided for, or who fraudulently makes any entry or alteration therein except as provided by law, or who permits any other person so to do, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 11; Laws 1971, c. 71-136, § 42; Laws 1977, c. 77-175, § 35.

**HISTORICAL AND STATUTORY NOTES**

**Prior Laws:**

Fla.St.1949, §§ 875.13, 875.28, 875.29.

Comp.Gen.Laws 1927, §§ 8153, 8173, 8174.

Rev.Gen.St.1920, §§ 5890, 5909, 5910.

Laws 1909, c. 5929, §§ 18, 19.

Gen.St.1906, § 3827.

Rev.St.1892, § 2785.

Laws 1868, c. 1637, subc. 12, § 7.

**LIBRARY REFERENCES**

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Elections ⇨317, 332.

Westlaw Topic No. 144.

C.J.S. Elections §§ 329, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 203, Undue Influence on Election Process; Threats; Fraud; Bribery.

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and

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West's F.S.A. § 104.23

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.23. Disclosing how elector votes**

Any election official or person assisting any elector who willfully discloses how any elector voted, except upon trial in court, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 12; Laws 1971, c. 71-136, § 43; Laws 1977, c. 77-175, § 35.

HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.04.

Comp.Gen.Laws 1927, § 8139.

Rev.Gen.St.1920, § 5876.

Gen.St.1906, § 3816.

Laws 1895, c. 4328, § 51.

CROSS REFERENCES

Secret voting, see § 101.041.

LIBRARY REFERENCES

2002 Main Volume

Elections ↪314.

Westlaw Topic No. 144.

C.J.S. Elections § 327.

RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 199, Offenses of Officials Connected With Elections.

UNITED STATES CODE ANNOTATED

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West's F.S.A. § 104.24

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.24. Penalty for assuming name**

A person may not, in connection with any part of the election process, fraudulently call himself or herself, or fraudulently pass by, any other name than the name by which the person is registered or fraudulently use the name of another in voting. Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1913, c. 6469, § 57; Rev.Gen.St.1920, §§ 360, 5913; Comp.Gen.Laws 1927, §§ 417, 8177; Laws 1943, c. 22014, § 4; Laws 1949, c. 25385, § 1; Fla.St.1949, §§ 101.14, 102.53; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 13; Laws 1971, c. 71-136, § 44; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 625, eff. July 10, 1995; Laws 1998, c. 98-129, § 31, eff. July 1, 1998.

## HISTORICAL AND STATUTORY NOTES

Former § 101.14, derived from Laws 1943, c. 22014, § 4, was repealed and a new § 101.14 was substituted by Laws 1949, c. 25385, § 1.

## LIBRARY REFERENCES

## 2002 Main Volume

Elections ↪ 312, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 326, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 201, Offenses in Connection With Voting.

## NOTES OF DECISIONS

**In general 1**  
**Evidence 2**

1. In general

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West's F.S.A. § 104.26

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.26. Penalty for destroying ballot or booth, etc.**

Any person who wrongfully, during or before an election, removes, tears down, destroys, or defaces any ballot, booth, compartment, or other convenience provided for the purpose of enabling the elector to prepare his or her ballot, or any card for the instruction of the voter, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**CREDIT(S)**

Laws 1895, c. 4328, § 41; Gen.St.1906, § 3812; Rev.Gen.St.1920, § 5873; Comp.Gen.Laws 1927, § 8136; Fla.St.1949, § 875.01. Amended by Laws 1995, c. 95-147, § 626, eff. July 10, 1995.

**HISTORICAL AND STATUTORY NOTES**

**Prior Laws:**

Fla.St.1949, § 875.01.  
Comp.Gen.Laws 1927, § 8136.  
Rev.Gen.St.1920, § 5873.  
Gen.St.1906, § 3812.  
Laws 1895, c. 4328, § 41.

**LIBRARY REFERENCES**

**2002 Main Volume**

Elections ↪317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

West's F. S. A. § 104.26, FL ST § 104.26

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second

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Your Search:	"TOC SELECTIONS"
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Client Identifier:	DEANNA SMITH
Database:	FL-ST-ANN
Lines:	803
Documents:	9
Images:	0

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West's F.S.A. § 104.271

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→104.271. False or malicious charges against, or false statements about, opposing candidates; penalty**

(1) Any candidate who, in a primary election or other election, willfully charges an opposing candidate participating in such election with a violation of any provision of this code, which charge is known by the candidate making such charge to be false or malicious, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 and, in addition, after conviction shall be disqualified to hold office.

(2) Any candidate who, in a primary election or other election, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of this code. An aggrieved candidate may file a complaint with the Florida Elections Commission pursuant to s. 106.25. The commission shall adopt rules to provide an expedited hearing of complaints filed under this subsection. Notwithstanding any other provision of law, the commission shall assess a civil penalty of up to \$5,000 against any candidate found in violation of this subsection, which shall be deposited to the account of the General Revenue Fund of the state.

## CREDIT(S)

Laws 1953, c. 28156, § 44; Laws 1971, c. 71-136, § 48; Laws 1977, c. 77-104, § 27; Laws 1977, c. 77-175, § 35; Laws 1985, c. 85-210, § 1. Amended by Laws 1995, c. 95-147, § 627, eff. July 10, 1995; Laws 1997, c. 97-13, § 44, eff. Jan. 1, 1998.

## LAW REVIEW AND JOURNAL COMMENTARIES

Executive suspension and removal of public officers under the 1968 Florida Constitution. William M. Barr and Frederick B. Karl, 23 U.Fla.L.Rev. 635 (1971).

## LIBRARY REFERENCES

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Elections ↪318, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 331, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 191, False Swearing or Declaration -- False or Malicious Charges Against, or False Statements About, Opposing Candidates.

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West's F.S.A. § 104.29

C

Effective: [See Text Amendments]

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.29. Inspectors refusing to allow watchers while ballots are counted**

The inspectors or other election officials shall, at all times while the ballots are being counted, allow as many as three persons near to them to see whether the ballots are being correctly read and called and the votes correctly tallied, and any official who denies this privilege or interferes therewith is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 51; Laws 1977, c. 77-175, § 35; Laws 1979, c. 79-400, § 53.

## HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.05.  
 Comp.Gen.Laws 1927, § 8140.  
 Rev.Gen.St.1920, § 5877.  
 Laws 1915, c. 6873, § 1.

## CROSS REFERENCES

Tabulation of vote where voting machine used, procedure, see § 101.54.

## LIBRARY REFERENCES

## 2002 Main Volume

Elections ↪ 314, 332.

Westlaw Topic No. 144.  
 C.J.S. Elections §§ 327, 353.

## RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 199, Offenses of Officials Connected With Elections.

## NOTES OF DECISIONS

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West's F.S.A. § 104.30

C

Effective: January 01, 2002

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

## → 104.30. Voting system; unlawful possession; tampering

(1) Any unauthorized person who unlawfully has possession of any voting system, components, or key thereof is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who tampers or attempts to tamper with or destroy any voting system or equipment with the intention of interfering with the election process or the results thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## CREDIT(S)

Laws 1929, c. 13893, § 26; Comp.Gen.Laws Supp.1936, § 8202(1); Fla.St.1949, § 100.28; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-379, § 17; Laws 1971, c. 71-136, § 52; Laws 1977, c. 77-175, § 35. Amended by Laws 2001, c. 2001-40, § 29, eff. Jan. 1, 2002.

## CROSS REFERENCES

Disposition of voting machine keys following election, see § 101.38.

Locking voting machine following election, see § 101.56.

## LIBRARY REFERENCES

## 2002 Main Volume

Elections ↪ 317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

## RESEARCH REFERENCES

## Encyclopedias

FL Jur. 2d Elections § 204, Theft, Destruction, Alteration, or Wrongful Possession or Handling, of Ballots and Election Equipment and Records.

West's F. S. A. § 104.30, FL ST § 104.30

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second

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West's F.S.A. § 104.31

**C**

**Effective: October 01, 2006**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.31. Political activities of state, county, and municipal officers and employees**

(1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall:

(a) Use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.

(b) Directly or indirectly coerce or attempt to coerce, command, or advise any other officer or employee to pay, lend, or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes. Nothing in this paragraph or in any county or municipal charter or ordinance shall prohibit an employee from suggesting to another employee in a noncoercive manner that he or she may voluntarily contribute to a fund which is administered by a party, committee, organization, agency, person, labor union or other employee organization for political purposes.

(c) Directly or indirectly coerce or attempt to coerce, command, and advise any such officer or employee as to where he or she might purchase commodities or to interfere in any other way with the personal right of said officer or employee.

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature, of elected officials or candidates for public office in the state or of any county or municipality thereof; and the provisions of paragraph (a) shall not be construed so as to limit the political activity in general or special elections of the officials appointed as the heads or directors of state administrative agencies, boards, commissions, or committees or of the members of state boards, commissions, or committees, whether they be salaried, nonsalaried, or reimbursed for expense. In the event of a dual capacity of any member of a state board, commission, or committee, any restrictive provisions applicable to either capacity shall apply. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature of the Governor, the elected members of the Governor's Cabinet, or the members of the Legislature. The provisions of paragraphs (b) and (c) shall apply to all officers and employees of the state or of any county or municipality thereof, whether elected, appointed, or otherwise employed, or whether the activity shall be in connection with a primary, general, special, bond, referendum, or other election of any kind or nature.

(2) An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty.

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West's F.S.A. § 104.32

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.32. Supervisor of elections; delivery of books to successor**

Any supervisor of elections who willfully fails or refuses promptly to comply with the demand of his or her successor for the delivery of registration books, papers, and blanks connected with his or her office is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1889, c. 3879, § 8; Rev.St.1892, § 2779; Laws 1895, c. 4328, § 9; Gen.St.1906, § 3820; Rev.Gen.St.1920, § 5881; Comp.Gen.Laws 1927, § 8144; Fla.St.1949, § 98.21; Laws 1951, c. 26870, § 8; Laws 1965, c. 65-60, § 2; Laws 1971, c. 71-136, § 54; Laws 1977, c. 77-175, § 35. Amended by Laws 1995, c. 95-147, § 629, eff. July 10, 1995.

#### LIBRARY REFERENCES

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C.J.S. Elections §§ 327, 353.

#### RESEARCH REFERENCES

##### Encyclopedias

FL Jur. 2d Elections § 199, Offenses of Officials Connected With Elections.

West's F. S. A. § 104.32, FL ST § 104.32

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.39

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.39. Witnesses as to violations**

Any person who violates any provision of this code shall be a competent witness against any other person so violating and may be compelled to attend and testify as any other person. The testimony given shall not be used in any prosecution or criminal proceeding against the person so testifying, except in a prosecution for perjury.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1977, c. 77-175, § 35.

HISTORICAL AND STATUTORY NOTES

**Prior Laws:**

Fla.St.1949, § 875.32.

Comp.Gen.Laws 1927, § 8181.

Rev.Gen.St.1920, § 5917.

Laws 1913, c. 6469, § 61.

CROSS REFERENCES

Persons not excused from testifying on ground testimony might incriminate, see § 914.04.

Prohibition against self-incrimination, see Const. Art. 1, § 9.

LIBRARY REFERENCES

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Witnesses ↪35.

Westlaw Topic No. 410.

C.J.S. Federal Civil Procedure § 521.

C.J.S. Witnesses § 49.

RESEARCH REFERENCES

**Encyclopedias**

FL Jur. 2d Elections § 188, by Florida Elections Commission -- Witnesses; Immunity from Prosecution.

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West's F.S.A. § 104.41

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

▣ Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→104.41. Violations not otherwise provided for**

Any violation of this code not otherwise provided for is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1971, c. 71-136, § 61; Laws 1977, c. 77-175, § 35.

LIBRARY REFERENCES

2002 Main Volume

Elections ↻317, 332.  
Westlaw Topic No. 144.  
C.J.S. Elections §§ 329, 353.

NOTES OF DECISIONS

**In general 1**

**1. In general**

Public officials, authorized by law, as well as the several candidates and the electorate, may report alleged violations of the Florida Election Code to an appropriate prosecuting attorney, who, upon subsequent investigation may take appropriate action as the Election Code and the authority of his office may authorize. Op.Atty.Gen., 072-331, Sept. 28, 1972.

The Florida Election Code imposes specific duties upon the supervisor of elections and other public officials, but enforcement of the election laws for which criminal sanctions are imposed lies with the appropriate prosecuting attorneys of the several counties and the determination of guilt in such cases rests with the judiciary. Op.Atty.Gen., 072-331, Sept. 28, 1972.

West's F. S. A. § 104.41, FL ST § 104.41

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second Regular Session of the Nineteenth Legislature

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West's F.S.A. § 104.42

**C****Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs &amp; Annos)

**→ 104.42. Fraudulent registration and illegal voting; investigation**

(1) The supervisor of elections is authorized to investigate fraudulent registrations and illegal voting and to report his or her findings to the local state attorney and the Florida Elections Commission.

(2) The board of county commissioners in any county may appropriate funds to the supervisor of elections for the purpose of investigating fraudulent registrations and illegal voting.

**CREDIT(S)**

Laws 1937, c. 17899, §§ 12, 14; Comp.Gen.Laws Supp.1940, § 369(4); Fla.St.1949, § 100.40; Laws 1951, c. 26870, § 8; Laws 1977, c. 77-175, § 35. Amended by Laws 1998, c. 98-129, § 32, eff. July 1, 1998.

**CROSS REFERENCES**

County annual budget, see § 129.01 et seq.

**LIBRARY REFERENCES**

2002 Main Volume

Elections k324.1.  
Westlaw Topic No. 144.  
C.J.S. Elections § 337.

**NOTES OF DECISIONS****In general 1****1. In general**

A board of county commissioners may amend an existing county budget, or adopt a supplemental county budget, so as to provide funds for the purpose of investigating fraudulent registrations and illegal voting, when no such funds, or an insufficient amount, were appropriated for such purposes. Op.Atty.Gen., 064-73, June 15, 1964.

West's F. S. A. § 104.42, FL ST § 104.42

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second

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West's F.S.A. § 104.43

**C**

**Effective: [See Text Amendments]**

West's Florida Statutes Annotated Currentness

Title IX. Electors and Elections (Chapters 97-109)

Chapter 104. Election Code: Violations; Penalties (Refs & Annos)

**→ 104.43. Grand juries; special investigation**

The grand jury in any circuit shall, upon the request of any candidate or qualified voter, make a special investigation when it convenes during a campaign preceding any election day to determine whether there is any violation of the provisions of this code, and shall return indictments when sufficient ground is found.

CREDIT(S)

Laws 1951, c. 26870, § 8; Laws 1977, c. 77-175, § 35.

**HISTORICAL AND STATUTORY NOTES**

**Prior Laws:**

Fla.St.1949, § 875.45.

Com.Gen.Laws 1927, § 8196.

Rev.Gen.St.1920, § 5932.

Laws 1913, c. 6470, § 17.

**LAW REVIEW AND JOURNAL COMMENTARIES**

The Florida jury process. S. O. Kanner and John E. Smith, 15 U.Fla.L.Rev. 1 (1962).

**LIBRARY REFERENCES**

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Grand Jury ↪25.

Westlaw Topic No. 193.

C.J.S. Grand Juries §§ 10, 76, 78, 80-81, 83-84.

**RESEARCH REFERENCES**

**Encyclopedias**

FL Jur. 2d Juries § 288, Initiation of Inquiry.

West's F. S. A. § 104.43, FL ST § 104.43

Current through Chapter 316 and S.J.R. No. 2788 (End) of the 2006 Second

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West's Ann.Cal.Elec.Code § 18000

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 1. General Provisions

**→ § 18000. Scope of division**

This division applies to all elections.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18000, enacted by Stats.1961, c. 23, § 18000, derived from Elec.C.1939, § 7700; Pol.C. § 1266a, added by Stats.1927, c. 236, § 1, providing for establishment of election return centers, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 12013, 12056, 15281, 29000, enacted by Stats.1961, c. 23, pp. 755, 758, 796, 869, §§ 12013, 12056, 15281, 29000.

Former § 29100, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 4963, 5010, 6601, 11500 (Stats.1939, c. 26, pp. 203, 205, 239, 310); Stats.1923, c. 96, p. 192, § 24; Pen.C. § 64 1/2, added by Stats.1899, c. 52, p. 59, § 1; Stats.1899, c. 120, p. 153, § 1.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Penal provisions of Elections Code and municipal referendum and initiative elections. (1965) 5 Santa Clara Law. 187.

**LIBRARY REFERENCES**

2003 Main Volume

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 Westlaw Topic No. 144.

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West's Ann.Cal.Elec.Code § 18001

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 1. General Provisions

**→§ 18001. General fine**

Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Amendment of this section by Initiative Measure (Prop. 52, Art. 4, § 4) was rejected at the Nov. 5, 2002 election.

Former § 18001, enacted by Stats.1961, c. 23, § 18001, derived from Elec.C.1939, § 7701; Pol.C. § 1266a, added by Stats.1927, c. 236, § 1, relating to precincts served by election return centers, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29001, enacted by Stats.1961, c. 23, p. 869, § 29001.

Former § 29101, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11501 (Stats.1939, c. 26, p. 310); Pen.C. § 61.

**CROSS REFERENCES**

Felony, definition and penalties, see Penal Code §§ 17, 18.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18002

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 1. General Provisions

**→§ 18002. Failure to perform or violation of duty; general penalty**

Every person charged with the performance of any duty under any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his or her official capacity, knowingly and fraudulently acts in contravention or violation of any of those laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18002, enacted by Stats.1961, c. 23, § 18002, derived from Elec.C.1939, § 7702; Pol.C. § 1266a, added by Stats.1927, c. 236, § 1, providing for changing election return center locations and precinct groupings, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29002, enacted by Stats.1961, c. 23, p. 869, § 29002.

Former § 29102, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11502 (Stats.1939, c. 26, p. 310); Pen.C. § 41.

**CROSS REFERENCES**

Ballots, see Elections Code § 18400 et seq.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

Misdemeanor, infraction, offense and punishment, see Penal Code §§ 17, 19.

Precinct boards, composition and qualifications, generally, see Elections Code § 12300 et seq.

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West's Ann.Cal.Elec.Code § 18100

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

## →§ 18100. Violations; imprisonment

(a) Every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she or that other person is not entitled to registration, is punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year.

(b) Every person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year. For purposes of this subdivision, "nonexistent person" includes, but is not limited to, deceased persons, animals, and inanimate objects.

## CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 220, enacted by Stats.1961, c. 23, p. 589, § 220.

Former § 29200, added by Stats.1976, c. 1192, § 15, amended by Stats.1979, c. 1032, § 1.

Elec.C.1939, § 139 (Stat.1939, c. 26, p. 58).

Pen.C. § 42, amended by Stats.1901, c. 158, p. 436, § 6; Stats.1905, c. 479, p. 639, § 1.

Pen.C. § 42a, added by Stats.1905, c. 479, p. 639, § 2.

## CROSS REFERENCES

Contests, grounds for election contests, see Elections Code § 16100.

County, City, defined for purposes of this Code, see Elections Code § 310.

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West's Ann.Cal.Elec.Code § 18101

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18101. Willful registration of fictitious person or person not requesting registration; violations; imprisonment**

Every person who knowingly and willfully completes, or causes or procures the completion of, in whole or in part, an affidavit of registration or a voter registration card, with the intent to cause the registration or reregistration as a voter of a fictitious person or of any person who has not requested registration or reregistration as a voter, is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in a county jail for not more than one year.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29200.5, added by Stats.1985, c. 894, § 1.

## CROSS REFERENCES

Affidavit of registration, contents, see Elections Code § 2150.

County, City, defined for purposes of this Code, see Elections Code § 310.

Duties of county clerk and deputies with respect to affidavits, see Elections Code § 2135 et seq.

Election Day Voter Registration Act of 2002, election day registration and voting, see Elections Code § 2170 et seq.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

Form of affidavit of registration, see Elections Code § 2157.

Misdemeanor, infraction, offense and punishment, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18102

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 2. Voter Registration (Refs & Annos)

**→ § 18102. Deputy or registration elections official; violations; imprisonment**

Any deputy elections official or registration elections official who knowingly registers a nonexistent person, knowingly registers a person under a false name or address, or knowingly registers a person who is ineligible to register is punishable by imprisonment in the state prison for 16 months or two or three years or in county jail for not more than one year.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 284, enacted by Stats.1961, c. 23, p. 593, § 284, amended by Stats.1970, c. 726, p. 1354, § 1; Stats.1975, c. 704, § 33.

Former § 29201, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 184 (Stats.1939, c. 26, p. 59).

Elec.C.1939, § 184, added as part of Pol.C. § 1095a by Stats.1911, Ex.Sess., c. 58, § 1, amended by Stats.1931, p. LXXXIII, § 1; Stats.1931, c. 320, § 2, amended to be Elec.C.1939 § 184, by Stats.1939, c. 27, § 3.

Pol.C. § 1095, amended by Stats.1899, c. 53, p. 61, § 1; Stats.1903, c. 222, p. 257, § 1; Stats.1911, c. 437, p. 889, § 1.

#### CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Deputies and clerks, report for failure to comply, see Elections Code §§ 2140, 18104.

Duties of county clerk and deputies with respect to affidavits, see Elections Code § 2135 et seq.

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West's Ann.Cal.Elec.Code § 18103

**C**

**Effective: [See Text Amendments]**

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→ § 18103. Interference with transfer of completed affidavits of registration; unauthorized retention or denial of right to return registration cards; misdemeanor**

Any person who knowingly or negligently (a) interferes with the prompt transfer of a completed affidavit of registration to the county elections official, (b) retains a voter's completed registration card, without the voter's authorization, for more than three days, excluding Saturdays, Sundays, and state holidays, or after the close of registration, or (c) denies a voter the right to return to the county elections official the voter's own completed registration card, is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 313, added by Stats.1975, c. 704, § 40.5.

Former § 313, added by Stats.1961, c. 23, p. 595, § 313.

Former § 29202, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 999, § 5; Stats.1977, c. 1116, § 11; Stats.1989, c. 983, § 12; Stats.1990, c. 239, § 1.

Elec.C.1939, § 223 (added by Stats.1939, c. 26, p. 61, amended by Stats.1949, c. 1432, p. 2492, § 2.

Pol.C. § 1096a, added by Stats.1917, c. 708, p. 1335, § 2, amended by Stats.1929, c. 749, p. 1420, § 4.

#### CROSS REFERENCES

Computation of time, first and last days, holidays, see Civil Code § 10; Code of Civil Procedure § 12 et seq.; Government Code § 6800 et seq.

Computation of time, time for performance of any act provided for or required by this code, holiday as last day for performance of act, see Elections Code § 15.

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West's Ann.Cal.Elec.Code § 18104

**C**

**Effective: [See Text Amendments]**

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18104. Deputy registrars; failure to return affidavits of registration; misdemeanor; report; civil or criminal action**

Any deputy registrar of voters having charge of affidavits of registration is guilty of a misdemeanor who knowingly neglects or refuses to return affidavits of registration as provided in Article 3 (commencing with Section 2135) of Chapter 2 of Division 2. The county elections official shall report to the district attorney of the county, under oath, the names of any deputies who have failed to return the affidavits. The district attorney shall take appropriate civil or criminal action.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 284, 285, enacted by Stats.1961, c. 23, p. 593, §§ 284, 285, amended by Stats.1970, c. 726, p. 1354, § 1; Stats.1975, c. 704, § 33.

Former § 29203, added by Stats.1976, c. 1192, § 20, amended by Stats.1988, c. 669, § 6.

Elec.C.1939, §§ 184, 185, 186 (Stats.1939, c. 26, p. 59).

Elec.C.1939, §§ 184, 185 and 186, added as part of Pol.C. § 1095a by Stats.1911, Ex.Sess., c. 58, § 1, amended by Stats.1931, p. LXXXIII, § 1; Stats.1931, c. 320, § 2, amended to be Elec.C.1939, §§ 184, 185 and 186 by Stats.1939, c. 27, § 3.

Pol.C. § 1095 amended by Stats.1899, c. 53, p. 61, § 1; Stats.1903, c. 222, p. 257, § 1; Stats.1911, c. 437, p. 889, § 1.

#### CROSS REFERENCES

Close of registration, see Elections Code § 2107.

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West's Ann.Cal.Elec.Code § 18105

**C**

**Effective: [See Text Amendments]**

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 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→ § 18105. Affidavit of registration or voter registration card; statement in support or opposition of candidates by other than registrant; misdemeanor**

No affidavit of registration or voter registration card shall contain, and no person other than the registrant shall write on or affix thereto, or cause to be written on or affixed thereto, any statement urging or indicating support or opposition to any candidate or measure.

Any person who violates this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29203.7, added by Stats.1985, c. 346, § 1.

#### CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

Voter registration, affidavit of registration, see Elections Code § 2102.

Voter registration cards, distribution and restrictions, see Elections Code § 2158.

Voter registration cards, return of voter registration cards, see Elections Code § 2138.

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West's Ann.Cal.Elec.Code § 18106

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
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 Chapter 2. Voter Registration (Refs & Annos)

→ § 18106. Tampering with party affiliation declaration

Every person is punishable by imprisonment in the state prison for 16 months or two or three years or in the county jail for not more than one year who, without the specific consent of the affiant, willfully and with the intent to affect the affiant's voting rights, causes, procures, or allows the completion, alteration, or defacement of the affiant's party affiliation declaration contained in an executed, or partially executed, affidavit of registration pursuant to subdivision (h) of Section 2150 and Section 2151.

This section shall not apply to a county elections official carrying out his or her official duties.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29204, added by Stats.1979, c. 565, § 1.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Elections officials, failure to perform or violation of duty relating to elections, general penalty, see Elections Code § 18002.

Fair campaign practices, generally, see Elections Code § 20400.

Fair campaign practices, Code of Fair Campaign Practices, see Elections Code § 20440.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

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West's Ann.Cal.Elec.Code § 18107

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
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 Chapter 2. Voter Registration (Refs & Annos)

→§ 18107. Voter registration cards; distribution; violations; infraction

Every person who willfully violates Section 2158 is guilty of an infraction, punishable by a fine not to exceed two hundred dollars (\$200).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29205, added by Stats.1981, c. 551, § 2.

## CROSS REFERENCES

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

Voter registration cards, distribution and restrictions, see Elections Code § 2158.

Voter registration cards, return of voter registration cards, see Elections Code § 2138.

Voter registration, confidentiality of voter registration information, restrictions on disclosure of information, see Government Code § 6254.4.

Voter registration, generally, see Elections Code § 2100 et seq.

## LIBRARY REFERENCES

2003 Main Volume

Elections ↻309.  
 Westlaw Topic No. 144.  
 C.J.S. Elections § 324, 355(2).

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West's Ann.Cal.Elec.Code § 18107.5

**C**

**Effective: January 01, 2003**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18107.5. Electronic submission of absentee ballot application for another registered voter; violation; offense; penalty**

Every person who willfully violates subdivision (c) of Section 3008 is guilty of an infraction, punishable by a fine not to exceed two hundred dollars (\$200) per application.

CREDIT(S)

(Added by Stats.2002, c. 753 (A.B.2277), § 6.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Sections 1 and 7 of Stats.2002, c. 753 (A.B.2277), provide:

"SECTION 1. The Legislature hereby finds and declares the following:

"(a) It is the policy of this state that all election laws and procedures are established and construed to assist the elector in the exercise of his or her right to vote. It is the further policy of the state that this goal be accomplished in an economical manner that prevents fraud and encourages electors to vote.

"(b) California's system of elections can be improved by the use of current and emerging technologies to increase voter participation.

"(c) Greater electoral participation may be achieved by allowing all voters to submit absentee ballot requests electronically.

"(d) It is the intent of the Legislature that the electronic application process for an absent voter's ballot utilize current Internet technology security.

"(e) It is the intent of the Legislature to provide voters with a web page secure Internet format that is completed manually by the voter and submitted over the Internet as a single, secure document."

"SEC. 7. The Secretary of State shall report to the Legislature, within one year of the first statewide election following implementation of this act, on the impact, if any, of permitting electronic application for absentee ballots, including the impact of the electronic applications on voter participation."

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West's Ann.Cal.Elec.Code § 18108

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18108. Registration assistance for consideration; failure to comply with statutory requirements; misdemeanor; penalties; exemptions**

(a) Except as provided in subdivision (c), any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, and fails to comply with Section 2159, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.

(b) Any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with Section 2159 shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not to exceed one year, or both.

(c) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1995, c. 946 (A.B.1532), § 2; Stats.1997, c. 456 (S.B.1077), § 4.)

## HISTORICAL AND STATUTORY NOTES

## 2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

The 1995 amendment rewrote the section, which had read:

"Any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, and fails to provide the information required by Section 2159, is guilty of a misdemeanor."

Stats.1997, c. 456, in subd. (a) substituted "subdivision (c)" for "subdivision (d)" following "as provided in" and deleted "subdivision (a) of" following "fails to comply with"; and in subd. (b) deleted "subdivision (a) of"

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West's Ann.Cal.Elec.Code § 18108.5



**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 2. Voter Registration (Refs & Annos)

**→§ 18108.5. Affidavit records; notice of noncomplying affidavits; failure to comply with statutory requirements; offense; penalties; exemptions**

(a) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration who fails to comply with Section 2159.5, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months or when the failure to comply is found to be willful, not exceeding one year, or both.

(b) Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, upon a third or subsequent conviction, on charges brought and separately tried, for failure to comply with Section 2159.5 shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not to exceed one year, or both.

(c) An elections official shall notify any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, that three or more affidavits of registration submitted by a person who assisted another to register to vote do not comply with Sections 18100, 18101, 18103, or 18106. The elections official may forward a copy of each of the noncomplying affidavits of registration to the district attorney, who may make a determination whether probable cause exists to believe that a violation of law has occurred.

(d) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

CREDIT(S)

(Added by Stats.1997, c. 456 (S.B.1077), § 5.)

HISTORICAL AND STATUTORY NOTES

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**Derivation:** Former § 2159, enacted by Stats.1994, c. 920, § 2, amended by Stats.1995, c. 946, § 1.

CROSS REFERENCES

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West's Ann.Cal.Elec.Code § 18109

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

**→§ 18109. Misuse of voter registration information; violation**

(a) It is a misdemeanor for any person in possession of information obtained pursuant to Article 5 (commencing with Section 2180) of Chapter 2 of Division 2, or Section 6254.4 of the Government Code, knowingly to use or permit the use of all or any part of that information for any purpose other than as permitted by law.

(b) It is a misdemeanor for any person knowingly to acquire possession or use of voter registration information referred to in subdivision (a) without first complying with Section 2188.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29207, added by Stats.1992, c. 2, § 4.

Former § 29207, added by Stats.1987, c. 1458, § 1458.

## CROSS REFERENCES

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

Voter registration, confidentiality of voter registration information, restrictions on disclosure of information, see Government Code § 6254.4.

Voter registration, generally, see Elections Code § 2100 et seq.

## LAW REVIEW AND JOURNAL COMMENTARIES

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West's Ann.Cal.Elec.Code § 18110

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 2. Voter Registration (Refs & Annos)

→ § 18110. Disclosure of home address or telephone number on voter registration card; violations

(a) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address.

(b) Any person or public entity who, in violation of Section 2194, discloses the home address or telephone number listed on a voter registration card of any of the following individuals is guilty of a misdemeanor:

(1) An active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(2) An employee of a city police department or a county sheriff's office.

(3) The spouse or children of the individuals specified in paragraphs (1) and (2) who live with those individuals.

(c) Any person or public entity, who in violation of Section 2194, discloses the home address or telephone number listed on a voter registration card of any individual specified in paragraph (1), (2), or (3) of subdivision (b), and that violation results in bodily injury to any of those individuals, is guilty of a felony.

CREDIT(S)

(Added by Stats.1994, c. 1207 (S.B.1518), § 9)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Section 15 of Stats.1994, c. 1207 (S.B.1518), provides:

"Section 9 of this bill shall become operative only if both this bill and SB 1547 [Stats.1994, c. 920] are chaptered, in which case Section 10 of this bill shall not become operative."

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Felony, definition and penalties, see Penal Code §§ 17, 18.

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West's Ann.Cal.Elec.Code § 18200

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→§ 18200. Subscription of false names to petitions; felony; imprisonment**

Every person who subscribes to any nomination petition a fictitious name, or who intentionally subscribes thereto the name of another, or who causes another to subscribe a fictitious name to a nomination petition, is guilty of a felony and is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18200, enacted by Stats.1961, c. 23, § 18200, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, providing for liberal construction of the chapter, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29221, enacted by Stats.1961, c. 23, p. 874, § 29221.

Former § 29300, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11649 (Stats.1939, c. 26, p. 315, amended by Stats.1959, c. 96, p. 1950, § 2).

Pen.C. § 472a, added by Stats.1915, c. 43, p. 51, § 1.

**CROSS REFERENCES**

Felony defined, see Penal Code § 17.

Subscription defined, see Government Code § 16.

**LIBRARY REFERENCES**

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West's Ann.Cal.Elec.Code § 18201

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18201. Nomination papers; false making, defacement or destruction; penalty**

Any person who falsely makes or fraudulently defaces or destroys all or any part of a nomination paper, is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18201, added by Stats.1961, c. 794, amended by Stats.1963, c. 414, § 7; Stats.1970, c. 1387, § 1, relating to processing and counting absentee ballots, was repealed by Stats.1975, c. 1203, § 8. The section was derived from former § 18201, enacted by Stats.1961, c. 23, § 18201, and was part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended.

Former § 18201, enacted by Stats.1961, c. 23, § 18201, relating to the count and canvass of absentee ballots, was repealed by Stat.1961, c. 794.

**Derivation:** Former § 7103, enacted by Stats.1961, c. 23, § 698, § 7103.

Former § 29301, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3203 (Stats.1939, c. 26, p. 167).

Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

**CROSS REFERENCES**

Filing false paper forbidden, see Elections Code § 18203.

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West's Ann.Cal.Elec.Code § 18202

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18202. Failure to properly file nomination papers or declaration of candidacy; misdemeanor**

Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any nomination paper or declaration of candidacy in his or her possession that is entitled to be filed under this code.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18202, enacted by Stats.1961, c. 23, § 18202, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, relating to appointment of canvassing boards, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 7102, enacted by Stats.1961, c. 23, p. 698, § 7102.

Former § 29302, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3202 (Stats.1939, c. 26, p. 166); Stats.1913, c. 690, p. 1412, § 32.

**CROSS REFERENCES**

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Filing of nomination papers, direct primary, see Elections Code § 8100 et seq.

Filing of nomination papers, independent nominations, see Elections Code § 8403.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Nominations, direct primary, form of nomination documents, see Elections Code § 8041.

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West's Ann.Cal.Elec.Code § 18203

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→ § 18203. False nomination papers or declaration of candidacy; filing or submission; penalty**

Any person who files or submits for filing a nomination paper or declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18203, enacted by Stats.1961, c. 23, § 18203, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., and 7880, as amended and Pol.C. §§ 1361, 1362, and 1364, as amended, relating to composition and duties of canvassing boards, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 7104, enacted by Stats.1961, c. 23, p. 698, § 7104.

Former § 29303, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3204 (Stats.1939, c. 26, p. 167).

Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

**CROSS REFERENCES**

Falsification and fraudulent destruction, see Elections Code § 18201.

Filing of papers, direct primary, see Elections Code § 8100 et seq.

Filing of papers, independent nominations, see Elections Code § 8403.

Local, special, vacancy, and consolidated elections, declaration of candidacy form, acknowledgement, see

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West's Ann.Cal.Elec.Code § 18204

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→§ 18204. Suppression of nomination papers or declarations of candidacy; penalty**

Any person who willfully suppresses all or any part of a nomination paper or declaration of candidacy either before or after filing is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state prison for 16 months or two or three years or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18204, enacted by Stats.1961, c. 23, § 18204, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, providing for compensation of canvassing boards, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 7105, enacted by Stats.1961, c. 23, p. 698, § 7105.

Former § 29304, added by Stats.1979, c. 565, § 1.

Elec.C.1939, § 3205 (Stats.1939, c. 26, p. 167); Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

## CROSS REFERENCES

Filing of papers, direct primary, see Elections Code § 8100 et seq.

Filing of papers, independent nominations, see Elections Code § 8403.

## LIBRARY REFERENCES

2003 Main Volume

Elections 309, 323, 332.

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West's Ann.Cal.Elec.Code § 18205

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 3. Nomination of Candidates (Refs & Annos)

**→§ 18205. Payment of consideration to induce a person not to become or to withdraw as a candidate; imprisonment**

A person shall not directly or through any other person advance, pay, solicit, or receive or cause to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office. Violation of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18205, enacted by Stats.1961, c. 23, § 18205, amended by Stats.1961, c. 65, part of a group of sections derived from Elec.C.1939, §§ 7800 et seq., 7840 et seq., as amended and Pol.C. §§ 1361, 1362, 1364 as amended, relating to the law applicable to the canvass of votes and disposition of challenges, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 12011, enacted by Stats.1961, c. 23, p. 755, § 12011.

Former § 29305, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 1.

Elec.C.1939, § 4961 (Stats.1939, c. 26, p. 203).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Withdrawal of candidates, see Elections Code § 8800 et seq.

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031047



West's Ann.Cal.Elec.Code § 18301

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 4. Election Campaigns (Refs & Annos)

▣ Article 1. Campaign Literature (Refs & Annos)

**→ § 18301. Simulated ballot or sample ballot; printing or duplication; statement, official seal or insignia violations; misdemeanor**

In addition to any other penalty, any person who prints or otherwise duplicates, or causes to be printed or duplicated, a simulated ballot or simulated sample ballot that does not contain the statement required by Section 20009 or that uses an official seal or insignia in violation thereof, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12059, added by Stats.1974, c. 681, p. 1547, § 2.

Former § 29414, added by Stats.1976, c. 1192, § 15.

#### CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Ballots, sample ballots, and voter pamphlets, generally, see Elections Code § 13000 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

#### LIBRARY REFERENCES

2003 Main Volume

Elections ↻309.

Westlaw Topic No. 144.

C.J.S. Elections § 324, 355(2).

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West's Ann.Cal.Elec.Code § 18302

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 4. Election Campaigns (Refs & Annos)

▣ Article 1. Campaign Literature (Refs & Annos)

**→ § 18302. False precinct information**

Every person is guilty of a misdemeanor who knowingly causes to be mailed or distributed, or knowingly mails or distributes, literature to any voter that includes a designation of the voter's precinct polling place other than a precinct polling place listed for that voter in an official precinct polling list that constituted the latest official precinct polling list at sometime not more than 30 days prior to the mailing or distribution.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29182, added by Stats.1973, c. 638, p. 1239, § 1.

Former § 29415, added by Stats.1976, c. 1192, § 15.

**CROSS REFERENCES**

Computation of time, first and last days, holidays, see Civil Code § 10; Code of Civil Procedure § 12 et seq.; Government Code § 6800 et seq.

Computation of time, time for performance of any act provided for or required by this code, holiday as last day for performance of act, see Elections Code § 15.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18303

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 1. Campaign Literature (Refs &amp; Annos)

## →§ 18303. Mass mailing; penal provisions

Every person who violates Section 84305 of the Government Code relating to mass mailing is subject to the penal provisions set forth in Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29416, added by Stats.1976, c. 1192, § 15.

## CROSS REFERENCES

Mass mailings, civil liability for violations, exception, see Government Code § 91005.5.

Mass mailings, defined, see Government Code § 82041.5.

Mass mailings, requirements, see Government Code § 84305.

## LIBRARY REFERENCES

2003 Main Volume

Elections ↪309.

Westlaw Topic No. 144.

C.J.S. Elections § 324, 355(2).

## RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18304

C

Effective: January 01, 2004

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 1. Campaign Literature (Refs &amp; Annos)

**→§ 18304. Reproduction or facsimile of seal of county or seal of local government agency in campaign literature or mass mailing with intent to deceive voters; offense**

(a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the county or the seal of a local government agency in any campaign literature or mass mailing, as defined in Section 82041.5 of the Government Code, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

(c) For purposes of this section, the term "local government agency" means a school district, special or other district, or any other board, commission, or agency of local jurisdiction.

## CREDIT(S)

(Added by Stats.2003, c. 380 (A.B.255), § 1.)

## HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2003 Legislation

Section 3 of Stats.2003, c. 380 (A.B.255), provides:

"SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution."

**Derivation:** Former Government Code § 25004.5, added by Stats.2001, c. 387 (A.B.706), § 2.

## CROSS REFERENCES

Deceit, obligations imposed by law,

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West's Ann.Cal.Elec.Code § 18310

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 4. Election Campaigns (Refs & Annos)

Article 2. Political Party Caucuses (Refs & Annos)

**→§ 18310. Consideration for voting or agreeing to vote for or against nominees or candidates; penalty**

A person shall not directly or through any other person pay or receive any money or other valuable consideration before, during, or after an election in order to reward any person or as a reward for voting for or against or agreeing to vote for or against the election or endorsement of any other person as the nominee or candidate of any caucus, convention, organized assemblage of delegates, or other body representing or claiming to represent a political party, candidate, or principle, or any club, society, or association. A violation of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 12002, 12010, enacted by Stats.1961, c. 23, pp. 754, 755, §§ 12002, 12010.

Former § 29420, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 4960, 12002 (Stats.1939, c. 26, pp. 201, 203, § 4652).

Pen.C. §§ 54a, 54b, added Stats.1905, c. 479, pp. 641, 642, §§ 10, 11.

CROSS REFERENCES

American Independent party, political party organization and central committee elections, generally, see Elections Code § 7500 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Democratic party, political party organization and central committee elections, generally, see Elections

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West's Ann.Cal.Elec.Code § 18311

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 2. Political Party Caucuses (Refs & Annos)

→§ 18311. Bribes; giving or receiving; penalty

Every person is punishable by imprisonment in the state prison for 16 months or two or three years who:

(a) Gives or offers a bribe to any officer or member of any political convention, committee, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom the bribe is given or offered to be more favorable to one candidate than another.

(b) Being a member of any of the bodies mentioned in this section receives or offers to receive any bribe described in subdivision (a).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29160, enacted by Stats.1961, c. 23, p. 871, § 29160, amended by Stats.1976, c. 1139, § 30.

Former § 29421, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11600 (Stats.1939, c. 26, p. 312, amended by Stats.1939, c. 1095, p. 3026).

Pen.C. § 57, amended by Stats.1901, c. 158, p. 440, § 19; Stats.1905, c. 479, p. 643, § 13.

Stats.1850, c. 99, p. 239, § 84, amended by Stats.1863, c. 408, p. 645, § 1; Stats.1850, c. 99, p. 239, § 85; Stats.1850, c. 99, p. 239, § 86, amended by Stats.1863, c. 408, p. 646, § 2.

CROSS REFERENCES

American Independent party, political party organization and central committee elections, generally, see

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West's Ann.Cal.Elec.Code § 18320

**C**

**Effective: January 01, 2004**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 3. Deceptive Online Activities (Refs & Annos)

**→ § 18320. Short title; political cyberfraud; definitions**

- (a) This act shall be known and may be cited as the "California Political Cyberfraud Abatement Act."
- (b) It is unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud.
- (c) As used in this section:
- (1) "Political cyberfraud" means a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site, and would cause a reasonable person, after reading the Web site, to believe the site actually represents the views of the proponent or opponent of a ballot measure. Political cyberfraud includes, but is not limited to, any of the following acts:
- (A) Intentionally diverting or redirecting access to a political Web site to another person's Web site by the use of a similar domain name, meta-tags, or other electronic measures.
- (B) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mousetrapping, popup screens, or other electronic measures.
- (C) Registering a domain name that is similar to another domain name for a political Web site.
- (D) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use, or both.
- (2) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain registration authority as part of an electronic address on the Internet.
- (3) "Political Web site" means a Web site that urges or appears to urge the support or opposition of a ballot measure.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

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West's Ann.Cal.Elec.Code § 18321

**C**

**Effective: January 01, 2004**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 4. Election Campaigns (Refs & Annos)

▣ Article 3. Deceptive Online Activities (Refs & Annos)

**→ § 18321. Application to domain name registrar, registry, or registration authority**

This article does not apply to a domain name registrar, registry, or registration authority.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

**HISTORICAL AND STATUTORY NOTES**

2006 Electronic Update

2001 Legislation

Former § 18321, added by Stats.2001, c. 927 (S.B.412), § 3, relating to application of article to domain name registrar, registry or registration authority, was repealed by the terms of § 18324 pursuant to Stats.2001, c. 927 (S.B.412), § 3, operative Jan. 1, 2003. See this section.

2003 Legislation

Legislative findings and declarations and severability provisions relating to Stats.2003, c. 277 (A.B.277), see Historical and Statutory Notes under Business and Professions Code § 17526.

**Derivation:** Former § 18321, added by Stats.2001, c. 927 (S.B.412), § 3.

**RESEARCH REFERENCES**

**Encyclopedias**

CA Jur. 3d Elections § 316, Generally; Application; Remedy; Jurisdiction.

West's Ann. Cal. Elec. Code § 18321, CA ELEC § 18321

Current through Ch. 910 of 2006 Reg.Sess. urgency legislation and all propositions which will appear on the ballot at the Nov. 7, 2006 election

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West's Ann.Cal.Elec.Code § 18322

**C**

**Effective: January 01, 2004**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 3. Deceptive Online Activities (Refs & Annos)

**→ § 18322. Transfer of domain name as remedy**

In addition to any other remedies available under law, a court may order the transfer of a domain name as part of the relief awarded for a violation of this article.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2001 Legislation

Former § 18322, added by Stats.2001, c. 927 (S.B.412), § 3, relating to violations, was repealed by the terms of § 18324 pursuant to Stats.2001, c. 927 (S.B.412), § 3, operative Jan. 1, 2003.

2003 Legislation

Legislative findings and declarations and severability provisions relating to Stats.2003, c. 277 (A.B.277), see Historical and Statutory Notes under Business and Professions Code § 17526.

RESEARCH REFERENCES

**Encyclopedias**

CA Jur. 3d Elections § 316, Generally; Application; Remedy; Jurisdiction.

**Treatises and Practice Aids**

2 Witkin Cal. Crim. L. 3d Crimes Against Gov't Auth. § 141, Wrongs Against Voters.

West's Ann. Cal. Elec. Code § 18322, CA ELEC § 18322

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West's Ann.Cal.Elec.Code § 18323

C

Effective: January 01, 2004

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 3. Deceptive Online Activities (Refs &amp; Annos)

**→§ 18323. Jurisdiction**

Jurisdiction for actions brought pursuant to this article shall be in accordance with Section 410.10 of the Code of Civil Procedure.

CREDIT(S)

(Added by Stats.2003, c. 277 (A.B.277), § 5.)

**HISTORICAL AND STATUTORY NOTES**

2006 Electronic Update

2001 Legislation

Former § 18323, added by Stats.2001, c. 927 (S.B.412), § 3, relating to jurisdiction, was repealed by the terms of § 18324 pursuant to Stats.2001, c. 927 (S.B.412), § 3, operative Jan. 1, 2003. See this section.

2003 Legislation

Legislative findings and declarations and severability provisions relating to Stats.2003, c. 277 (A.B.277), see Historical and Statutory Notes under Business and Professions Code § 17526.

**Derivation:** Former § 18323, added by Stats.2001, c. 927 (S.B.412), § 3.

West's Ann. Cal. Elec. Code § 18323, CA ELEC § 18323

Current through Ch. 910 of 2006 Reg.Sess. urgency legislation and all propositions which will appear on the ballot at the Nov. 7, 2006 election

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West's Ann.Cal.Elec.Code § 18340

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
    Chapter 4. Election Campaigns (Refs & Annos)  
        Article 4. Political Meetings

**→ § 18340. Prevention of electors from assembling; misdemeanor**

Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meetings for the consideration of public questions is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12046, enacted by Stats.1961, c. 23, p. 756, § 12046.

Former § 29440, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5004 (Stats.1939, c. 26, p. 204).

Pen.C. § 58.

**CROSS REFERENCES**

Disqualification for bribery, see Const. Art. 7, § 8.

Disturbance of public assembly or meeting, see Penal Code § 403.

Elector, defined for purposes of this Code, see Elections Code § 321.

Intimidation of voters, see Elections Code § 18540 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

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West's Ann.Cal.Elec.Code § 18350

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 4. Election Campaigns (Refs &amp; Annos)

▣ Article 5. Misrepresentation by Candidates (Refs &amp; Annos)

**→§ 18350. Implication that candidate is incumbent or acting in capacity of public officer; misdemeanor; injunction**

Every person is guilty of a misdemeanor who, with intent to mislead the voters in connection with his or her campaign for nomination or election to a public office or in connection with the campaign of another person for nomination or election to a public office, does either of the following acts:

(a) Assume, pretend, or imply, by his or her statements or conduct, that he or she is the incumbent of a public office when that is not the case.

(b) Assume, pretend, or imply, by his or her statements or conduct, that he or she is or has been acting in the capacity of a public officer when that is not the case.

Any violation of this section may be enjoined in a civil action brought by any candidate for the public office involved.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12051, enacted by Stats.1961, c. 23, p. 758, § 12051.

Former § 29450, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5006.5 (added by Stats.1959, c. 335, p. 2258, § 1).

CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

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West's Ann.Cal.Elec.Code § 18351

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 4. Election Campaigns (Refs & Annos)

▣ Article 5. Misrepresentation by Candidates (Refs & Annos)

**→§ 18351. Candidates' statements; false statement of material fact with intent to mislead; punishment**

Any candidate in an election or incumbent in a recall election who knowingly makes a false statement of a material fact in a candidate's statement, prepared pursuant to Section 11327 or 13307, with the intent to mislead the voters in connection with his or her campaign for nomination or election to a nonpartisan office is punishable by a fine not to exceed one thousand dollars (\$1,000).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29451, added by Stats.1982, c. 57, § 1.

CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Election, defined for purposes of this Code, see Elections Code § 318.

Nonpartisan office, defined for purposes of this Code, see Elections Code § 334.

Recall elections, generally, see Const. Art. 2, § 13; Elections Code § 11000 et seq.

Tie vote, primary election nominations, nonpartisan candidates, see Elections Code § 8141.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18360

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 4. Election Campaigns (Refs &amp; Annos)

▣ Article 6. Solicitation of Funds (Refs &amp; Annos)

**→§ 18360. Solicitation without required consent; violations; misdemeanor**

Any person who violates Section 20201 is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12302, enacted by Stats.1961, c. 23, p. 759, § 12302.

Former § 29460, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5302 (added by Stats.1941, c. 576, p. 1960, § 12).

**CROSS REFERENCES**

Campaign funds, solicitation of funds, requirements, see Elections Code § 20200 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

**LIBRARY REFERENCES**

2003 Main Volume

Elections ↪317.

Westlaw Topic No. 144.

C.J.S. Elections § 216(1), 329, 356.

**RESEARCH REFERENCES**

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West's Ann.Cal.Elec.Code § 18361

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 4. Election Campaigns (Refs & Annos)  
Article 6. Solicitation of Funds (Refs & Annos)

→§ 18361. Solicitation not authorized by candidate or committee; use of name; notice; misdemeanor

Upon the complaint of the affected candidate or committee, any person who violates Section 20202 or 20203 is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Derivation: Former § 29462, added by Stats.1979, c. 872, § 4.

CROSS REFERENCES

Campaign funds, solicitation of funds, requirements, see Elections Code § 20200 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Committee, defined for purposes of this Code, see Elections Code § 309.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

LIBRARY REFERENCES

2003 Main Volume

Elections ↩317.  
Westlaw Topic No. 144.  
C.J.S. Elections § 216(1), 329, 356.

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West's Ann.Cal.Elec.Code § 18370

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 4. Election Campaigns (Refs & Annos)

Article 7. Electioneering (Refs & Annos)

**→§ 18370. Electioneering where voters may be casting votes; misdemeanor**

No person, on election day, or at any time that a voter may be casting a ballot, shall, within 100 feet of a polling place or an elections official's office:

- (a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.
- (b) Solicit a vote or speak to a voter on the subject of marking his or her ballot.
- (c) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.
- (d) Do any electioneering.

As used in this section, "100 feet of a polling place or an elections official's office" means a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

Any person who violates any of the provisions of this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1998, c. 554 (S.B.7), § 3.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Stats.1998, c. 554, made the section applicable to acts at any time that a voter may be casting a ballot and acts in proximity to an elections official's office.

**Derivation:** Former §§ 45, 14211, 14212, 14240, 14434, enacted by Stats.1961, c. 23, pp. 584, 762, 763, 771, §§ 45, 14211, 14212, 14240, 14434, amended by Stats.1961, c. 56, p. 997, § 3; Stats.1963, c. 1560, p. 3143, § 1; Stats.1965, c. 1908, p. 4417, § 1; Stats.1967, c. 208, p. 1334, § 1; Stats.1971, c. 1219, p. 2366, § 1; Stats.1971, c. 1760, p. 3807, § 2; Stats.1975, c. 544, § 1; Stats.1975, c. 704, § 72.

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West's Ann.Cal.Elec.Code § 18371

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 4. Election Campaigns (Refs &amp; Annos)

Article 7. Electioneering (Refs &amp; Annos)

→§ 18371. Absentee voters; solicitation in the residence on the immediate presence of absentee voter; misdemeanor

(a) No candidate or representative of a candidate, and no proponent, opponent, or representative of a proponent or opponent, of an initiative, referendum, or recall measure, or of a charter amendment, shall solicit the vote of an absentee voter, or do any electioneering, while in the residence or in the immediate presence of the voter, and during the time he or she knows the absentee voter is voting.

(b) Any person who knowingly violates this section is guilty of a misdemeanor.

(c) This section shall not be construed to conflict with any provision of the federal Voting Rights Act of 1965, as amended, nor to preclude electioneering by mail or telephone or in public places, except as prohibited by Section 18370, or by any other provision of law.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29473, added by Stats.1988, c. 1329, § 2.

CROSS REFERENCES

Absentee voting, applications and voting procedures, generally, see Elections Code § 3000 et seq.

Absent voter ballots, corruption of the voting process, penal provisions, see Elections Code § 18576 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Initiative, referendum or recall petition, persons entitled to circulate, see Elections Code § 102.

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West's Ann.Cal.Elec.Code § 18380

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 4. Election Campaigns (Refs & Annos)  
Article 8. Vandalism at Polling Places

**→§ 18380. Violations; misdemeanor**

(a) No person, during any election, shall do any of the following:

- (1) Remove or destroy any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to prepare his or her ballot.
- (2) Remove, tear down, or deface the cards printed for the instruction of voters.
- (3) Remove, tear, mark or otherwise deface any voter index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted.
- (4) Remove, tear down, or deface the signs identifying the location of a polling place or identifying areas within 100 feet of a polling place.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 14011, 14012, 14201, enacted by Stats.1961, c. 23, p. 761, §§ 14011, 14012, 14204, amended by Stats.1971, c. 294, p. 606, § 1.

Former § 29480, added by Stats.1976, c. 1192, § 15, amended by Stats.1989, c. 310, § 1.

Elec.C.1939, §§ 5512, 5513, 5554 (Stats.1939, c. 26, pp. 208, 209).

Pol.C. §§ 1150, 1214, added by Stats.1891, c. 130, p. 178, § 32, amended by Stats.1933, c. 397, p. 1024, § 2.

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West's Ann.Cal.Elec.Code § 18390

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 4. Election Campaigns (Refs & Annos)  
 Article 9. Misuse of State Publications

**→ § 18390. State agencies and departments; misuse of publications**

No agency or department of the state may use its publications to advise state employees of any constitutional officer's choice of candidates for public office or for recommending positions on specific ballot propositions not related to the functions of that agency or department.

For purposes of this section "publications" means any written or printed matter including, but not limited to, agency or department memorandums or directives, but shall not include legislative newsletters or state ballot pamphlets.

Any state officer who violates this section is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29490, added by Stats.1977, c. 1, § 6.5.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Ballot pamphlet, Political Reform Act of 1974, generally, see Government Code § 88001 et seq.

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18400

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

**→ § 18400. Use or furnishing of imitation ballot paper or punchcards; penalties**

Any person who makes, uses, keeps, or furnishes to others, any paper or punchcards watermarked or overprinted in imitation of ballot paper or punchcards is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the state prison for 16 months, two or three years, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

**2003 Main Volume**

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18400, enacted by Stats.1961, c. 23, § 18400, relating to application of the article, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 10003, enacted by Stats.1961, c. 23, p. 712, § 10003, amended by Stats.1969, c. 913, p. 1817, § 3.

Former § 29183, added by Stats.1975, c. 1203, § 9.

Former § 29500, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 3703 (Stats.1939, c. 26, p. 167).

Pol.C. § 1213, added by Stats.1891, c. 130, p. 178, § 32.

**CROSS REFERENCES**

Ballot, defined for purposes of this Code, see Elections Code § 301.

Ballots, printing specifications, see Elections Code § 13200 et seq.

Felony, infraction, definition and penalties, see Penal Code §§ 17, 18.

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West's Ann.Cal.Elec.Code § 18401

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

**→§ 18401. Printing or circulation of nonconforming ballots**

Every person who prints any ballot not in conformity with Chapter 2 (commencing with Section 13100) of Division 13, or who circulates or gives to another any ballot, knowing at the time that the ballot does not conform to Chapter 2 (commencing with Section 13100) of Division 13, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18401, enacted by Stats.1961, c. 23, § 18401, amended by Stats.1963, c. 1979, § 1; Stats.1967, c. 140, § 1, relating to meetings of the election board and canvassing the returns, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29181, enacted by Stats.1961, c. 23, p. 872, § 29181.

Former § 29501, added by Stats.1976, c. 1192, § 15, amended by Stats.1976, c. 1438, § 23.2.

Elec.C.1939, § 11621 (Stats.1939, c. 26, p. 313).

Pen.C. § 62, added by Code Am.1873-74, c. 379, p. 456, § 1, amended by Stats.1901, c. 158, p. 441, § 22; Stats.1905, c. 479, p. 645, § 16.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Misdemeanor, punishment, see Penal Code § 19.

Misdemeanor defined, see Penal Code § 17.

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West's Ann.Cal.Elec.Code § 18402

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**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 5. Ballots (Refs & Annos)

**→§ 18402. Knowing distribution of unauthorized application for absent voter's ballot**

Any individual, group, or organization that knowingly distributes any application for an absent voter's ballot that does not conform to Chapter 1 (commencing with Section 3000) of Division 3 is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18402, enacted by Stats.1961, c. 23, § 18402, providing that the board of supervisor need not be in session during the time of canvass, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29505, added by Stats.1987, c. 466, § 1, amended by Stats.1990, c. 1121 (A.B.3795), § 3.

**CROSS REFERENCES**

Absent voter, special absentee voter, defined for purposes of this Code, see Elections Code § 300.

Ballot, defined for purposes of this Code, see Elections Code § 301.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Voter, defined for purposes of this Code, see Elections Code § 359.

**LIBRARY REFERENCES**

2003 Main Volume

Elections ↪309.  
Westlaw Topic No. 144.

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West's Ann.Cal.Elec.Code § 18403

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
 Elections Code (Refs & Annos)  
 Division 18. Penal Provisions (Refs & Annos)  
 Chapter 5. Ballots (Refs & Annos)

**→§ 18403. Receipt or examination of, or solicitation of voter to show voted ballot; penalty**

Any person other than an elections official or a member of the precinct board who receives a voted ballot from a voter or who examines or solicits the voter to show his or her voted ballot is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. This section shall not apply to persons returning an absentee ballot pursuant to Sections 3017 and 3021 or persons assisting a voter pursuant to Section 14282.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18403, enacted by Stats.1961, c. 23, § 18403, relating to postponement of the canvass, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14248, added by Stats.1976, c. 220, § 6.

Former § 14422, enacted by Stats.1961, c. 23, p. 769, § 14422.

Former § 29506, added by Stats.1989, c. 310, § 2.

Elec.C.1939, § 5720 (Stats.1939, c. 26, p. 216).

Pol.C. § 1215, added by Stats.1891, c. 130, p. 178, § 32, amended by Stats.1913, c. 641, p. 1172, § 1.

## CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

County, City, defined for purposes of this Code, see Elections Code § 310.

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031370



West's Ann.Cal.Elec.Code § 18500

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 1. General Provisions

**→ § 18500. Fraud; casting of votes; felony; imprisonment**

Any person who commits fraud or attempts to commit fraud, and any person who aids or abets fraud or attempts to aid or abet fraud, in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony, punishable by imprisonment for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18500, enacted by Stats.1961, c. 23, § 18500, relating to application of the article, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14690, enacted by Stats.1961, c. 23, p. 779, § 14690, amended by Stats.1975, c. 1203, § 3.1.

Former § 14720, added by Stats.1975, c. 1203, § 3.4, amended by Stats.1976, c. 1139, § 21.

Former § 29610, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 2.

Elec.C.1939, § 5950 (Stats.1939, c. 26, p. 225).

Pol.C. § 1363, added by Stats.1923, c. 283, p. 592, § 1.

CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

Contests, grounds for election contests, see Elections Code § 16100.

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031371

West's Ann.Cal.Elec.Code § 18501

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
    ▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)  
        ▣ Article 1. General Provisions

**→§ 18501. Public officials; aiding illegal casting of votes; fraud; disqualification from holding office in state; imprisonment**

Any public official who knowingly violates any of the provisions of this chapter, and thereby aids in any way the illegal casting or attempting to cast a vote, or who connives to nullify any of the provisions of this chapter in order that fraud may be perpetrated, shall forever be disqualified from holding office in this state and upon conviction shall be sentenced to a state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18501, enacted by Stats.1961, c. 23, § 18501, providing for public recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14692, enacted by Stats.1961, c. 23, p. 780, § 14692.

Former § 14722, added by Stats.1975, c. 1203, § 3.4, amended by Stats.1976, c. 1139, § 22.

Former § 29611, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5952 (Stats.1939, c. 26, p. 225).

Pol.C. § 1363, added by Stats.1923, c. 283, p. 592, § 1.

**CROSS REFERENCES**

Aiding and abetting, generally, see Penal Code § 30 et seq.

Bribe to procure election or appointment, disqualification and exclusion from office, see Const. Art. 7, § 8.

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West's Ann.Cal.Elec.Code § 18502

▷

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 1. General Provisions

**→§ 18502. Interference with officers or voters; imprisonment**

Any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18502, enacted by Stats.1961, c. 23, § 18502, requiring that a copy of the resolution ordering a recount be posted, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 17092, 17093, enacted by Stats.1961, c. 23, p. 809, §§ 17092, 17093.

Former § 29004, added by Stats.1975, c. 1203, § 16.

Former § 29612, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 7072, 7073 (Stats.1939, c. 26, p. 243, amended by Stats.1951, c. 761, p. 2023, § 1).

Pen.C. § 45, amended by Stats.1901, c. 158, p. 436, § 8; Stats.1905, c. 479, p. 639, § 3.

**CROSS REFERENCES**

Canvass, recount and tie vote procedures, semifinal official canvass and official canvass, generally, see Elections Code § 15000 et seq.

Contests, grounds for election contests, see Elections Code § 16100.

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West's Ann.Cal.Elec.Code § 18520

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 2. Corruption of Voters (Refs & Annos)

**→§ 18520. Offer or promise of office, place or employment; to induce other to vote or refrain from voting; penalties**

A person shall not directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:

- (a) Refrain from voting.
- (b) Vote for any particular person.
- (c) Refrain from voting for any particular person.

A violation of any of the provisions of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12004, enacted by Stats.1961, c. 23, p. 754, § 12004.

Former § 29304, added by Stats.1976, c. 224, § 10.

Former § 29620, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 4954 (Stats.1939, c. 26, p. 202).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

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West's Ann.Cal.Elec.Code § 18521

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 2. Corruption of Voters (Refs & Annos)

**→ § 18521. Gift or other consideration to induce person to vote or refrain from voting; penalties**

A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:

(a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.

(b) Remained away from the polls.

(c) Refrained or agreed to refrain from voting.

(d) Induced any other person to:

(1) Remain away from the polls.

(2) Refrain from voting.

(3) Vote or refrain from voting for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 12000, 12001, enacted by Stats.1961, c. 23, pp. 753, 754, §§ 12000, 12001.

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031375

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West's Ann.Cal.Elec.Code § 18522

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 2. Corruption of Voters (Refs &amp; Annos)

**→§ 18522. Payment or offer to pay, lend or contribute to induce person to vote or refrain from voting**

Neither a person nor a controlled committee shall directly or through any other person or controlled committee pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to:

(a) Induce any voter to:

- (1) Refrain from voting at any election.
- (2) Vote or refrain from voting at an election for any particular person or measure.
- (3) Remain away from the polls at an election.

(b) Reward any voter for having:

- (1) Refrained from voting.
- (2) Voted for any particular person or measure.
- (3) Refrained from voting for any particular person or measure.
- (4) Remained away from the polls at an election.

Any person or candidate violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2; Stats.1994, c. 818 (S.B.1384), § 1.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections

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031376

West's Ann.Cal.Elec.Code § 18523

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 2. Corruption of Voters (Refs & Annos)

**→ § 18523. Bribery; payment of consideration with intent to bribe; penalties**

A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, shall be used in bribery at any election, or knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12007, added by Stats.1961, c. 23, p. 755, § 12007.

Former § 29623, added by Stats.1976, c. 1192, § 15, amended by Stats.1981, c. 714, § 117.

Elec.C.1939, § 4957 (Stats.1939, c. 26, p. 202).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

**CROSS REFERENCES**

Bribery and corruption, see Penal Code § 92 et seq.

Bribe to procure election or appointment, disqualification and exclusion from office, see Const. Art. 7, § 8.

Disqualification from office, see Government Code § 1020 et seq.

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West's Ann.Cal.Elec.Code § 18524

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 2. Corruption of Voters (Refs & Annos)

**→ § 18524. Boarding, lodging or maintaining persons with intent to secure vote or to induce voting**

A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, will be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of that person or to induce that person to vote for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 12008, enacted by Stats.1961, c. 23, p. 755, § 12008.

Former § 29624, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 5.

Elec.C.1939, § 4958 (Stats.1939, c. 26, p. 203).

Pen.C. § 54b, added by Stats.1905, c. 479, p. 642, § 11.

**CROSS REFERENCES**

Determination of residence, see Elections Code § 349.

Election, defined for purposes of this Code, see Elections Code § 318.

Measure, defined for purposes of this Code, see Elections Code § 329.

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West's Ann.Cal.Elec.Code § 18540

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

<sup>Ⓜ</sup> Chapter 6. Corruption of the Voting Process (Refs & Annos)        <sup>Ⓜ</sup> Article 3. Intimidation of Voters (Refs & Annos)**→ § 18540. Use of force, violence, tactic of coercion or intimidation; penalties**

(a) Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

(b) Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

**CREDIT(S)**

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES****2003 Main Volume**

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 29130 to 29132, enacted by Stats.1961, c. 23, p. 870, §§ 29130 to 29132.

Former § 29630, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 6; Stats.1989, c. 310, § 3.

Elec.C.1939, §§ 11580 to 11582 (Stats.1939, c. 26, pp. 311, 312, amended by Stats.1943, c. 578, p. 2151, § 11).

Pen.C. §§ 53, 59, amended by Stats.1893, c. 11, p. 7, § 1; Stats.1901, c. 158, p. 441, § 21; Stats.1905, c. 479, p. 644, § 15.

**CROSS REFERENCES**

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031379

West's Ann.Cal.Elec.Code § 18541

C

Effective: January 01, 2005

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 3. Intimidation of Voters (Refs & Annos)

**→§ 18541. Prohibited activities in proximity of polling place relating to the intent of dissuading others from voting; penalties**

(a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following:

(1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

(2) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.

(3) Photograph, videotape, or otherwise record a voter entering or exiting a polling place.

(b) Any violation of this section is punishable by imprisonment in a county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

(c) For purposes of this section, 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2003, c. 390 (A.B.915), § 1; Stats.2004, c. 183 (A.B.3082), § 92.)

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2003 Legislation

Stats.2003, c. 390 (A.B.915), in subd. (a), added par. (3).

2004 Legislation

Stats.2004, c. 183 (A.B.3082), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2004, c. 183 (A.B.3082), to other 2004 legislation, see Historical and

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031380

West's Ann.Cal.Elec.Code § 18542

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 3. Intimidation of Voters (Refs & Annos)

**→ § 18542. Political material in pay envelopes**

Every employer, whether a corporation or natural person, or any other person who employs, is guilty of a misdemeanor if, in paying his or her employees the salary or wages due them, encloses their pay in pay envelopes upon which or in which there is written or printed the name of any candidate or any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of the employees.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29134, enacted by Stats.1961, c. 23, p. 871, § 29134.

Former § 29631, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 7.

Elec.C.1939, § 11584 (Stats.1939, c. 26, p. 312).

Pen.C. § 59, amended by Stats.1901, c. 158, p. 441, § 21; Stats.1905, c. 479, p. 644, § 15.

**CROSS REFERENCES**

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Interference with political activities of employees, see Labor Code § 1101 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

**LAW REVIEW AND JOURNAL COMMENTARIES**

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West's Ann.Cal.Elec.Code § 18543

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 3. Intimidation of Voters (Refs & Annos)

**→ § 18543. Challenging right to vote without probable cause; conspiracies; penalty**

(a) Every person who knowingly challenges a person's right to vote without probable cause or on fraudulent or spurious grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting, or who fraudulently advises any person that he or she is not eligible to vote or is not registered to vote when in fact that person is eligible or is registered, or who violates Section 14240, is punishable by imprisonment in the county jail for not more than 12 months or in the state prison.

(b) Every person who conspires to violate subdivision (a) is guilty of a felony.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29137, added by Stats.1965, c. 1908, p. 4420, § 11.

Former § 29632, added by Stats.1976, c. 1192, § 15, amended by Stats.1989, c. 415, § 2.

**CROSS REFERENCES**

County, City, defined for purposes of this Code, see Elections Code § 310.

Felony, definition and penalties, see Penal Code §§ 17, 18.

Voter, defined for purposes of this Code, see Elections Code § 359.

Voters, challenging a voter, election day procedures, see Elections Code § 14240 et seq.

**LIBRARY REFERENCES**

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031388



West's Ann.Cal.Elec.Code § 18544

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 3. Intimidation of Voters (Refs & Annos)

**→§ 18544. Persons in possession of a firearm or uniformed peace officers or security guards stationed near polling place without authorization; penalty; application**

(a) Any person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, who is stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate city or county elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

(b) This section shall not apply to any of the following:

- (1) An unarmed uniformed guard or security personnel who is at the polling place to cast his or her vote.
- (2) A peace officer who is conducting official business in the course of his or her public employment or who is at the polling place to cast his or her vote.
- (3) A private guard or security personnel hired or arranged for by a city or county elections official.
- (4) A private guard or security personnel hired or arranged for by the owner or manager of the facility or property in which the polling place is located if the guard or security personnel is not hired or arranged solely for the day on which an election is held.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29634, added by Stats.1989, c. 310, § 3.5.

CROSS REFERENCES

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031383

West's Ann.Cal.Elec.Code § 18545

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 3. Intimidation of Voters (Refs & Annos)

**→ § 18545. Hiring or arranging for another in possession of firearm or uniformed peace officer or security guard to be stationed near polling place; penalty**

Any person who hires or arranges for any other person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. This section shall not apply to the owner or manager of the facility or property in which the polling place is located if the private guard or security personnel is not hired or arranged solely for the day on which the election is held.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29635, added by Stats.1989, c. 310, § 4.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

LIBRARY REFERENCES

2003 Main Volume

Elections ↪ 320.

Westlaw Topic No. 144.

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031384



West's Ann.Cal.Elec.Code § 18546

**Effective: January 01, 2003**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 3. Intimidation of Voters (Refs & Annos)

**→ § 18546. Elections official; immediate vicinity**

As used in this article:

(a) "Elections official" means the county elections official, registrar of voters, or city clerk.

(b) "Immediate vicinity" means the area within a distance of 100 feet from the room or rooms in which the voters are signing the roster and casting ballots.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2002, c. 221 (S.B.1019), § 22.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Stats.2002, c. 221 (S.B.1019) repeals obsolete provisions and revises references to the county clerk and the registrar of voters to, instead, refer to, as appropriate, the clerk of the board of supervisors, the county elections official, the clerk of the legislative body, or the appropriate financial officer or other designated official in a county; and revises certain obsolete provisions relating to special district elections.

**Derivation:** Former § 29636, added by Stats.1989, c. 310, § 5.

CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Clerk, defined for purposes of this Code, see Elections Code § 307.

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18560

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18560. Fraudulent voting; crime**

Every person is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year, who:

- (a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
- (b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
- (c) Impersonates or attempts to impersonate a voter at an election.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18560, added by Stats.1961, c. 1672, defining constitutional office, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 14403, 14421, 17090, 17091, 29430, enacted by Stats.1961, c. 23, pp. 767, 769, 809, 876, §§ 14403, 14421, 17090, 17091, 29430, amended by Stats.1976, c. 220, § 15; Stats.1976, c. 1139, § 46.

Former § 29640, added by 1976, c. 1192, § 15, amended by Stats.1977, c. 1205, § 80.

Elec.C.1939, §§ 5701, 5719, 7070, 7071, 11700 (Stats.1939, c. 26, pp. 215, 217, 243, 316).

Pen.C. § 45, amended Stats.1901, c. 158, p. 436, §§ 8, 9; Stats.1905, c. 479, p. 639, §§ 3, 4.

## CROSS REFERENCES

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West's Ann.Cal.Elec.Code § 18560

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

<sup>Ⓜ</sup> Chapter 6. Corruption of the Voting Process (Refs & Annos)        <sup>Ⓜ</sup> Article 4. Corruption of Voting (Refs & Annos)**→ § 18560. Fraudulent voting; crime**

Every person is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year, who:

- (a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
- (b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
- (c) Impersonates or attempts to impersonate a voter at an election.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18560, added by Stats.1961, c. 1672, defining constitutional office, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 14403, 14421, 17090, 17091, 29430, enacted by Stats.1961, c. 23, pp. 767, 769, 809, 876, §§ 14403, 14421, 17090, 17091, 29430, amended by Stats.1976, c. 220, § 15; Stats.1976, c. 1139, § 46.

Former § 29640, added by 1976, c. 1192, § 15, amended by Stats.1977, c. 1205, § 80.

Elec.C.1939, §§ 5701, 5719, 7070, 7071, 11700 (Stats.1939, c. 26, pp. 215, 217, 243, 316).

Pen.C. § 45, amended Stats.1901, c. 158, p. 436, §§ 8, 9; Stats.1905, c. 479, p. 639, §§ 3, 4.

**CROSS REFERENCES**

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West's Ann.Cal.Elec.Code § 18561

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 4. Corruption of Voting (Refs & Annos)

**→§ 18561. Procuring or advising vote of unqualified persons; aiding or abetting offenses**

Every person is punishable by imprisonment in the state prison for 16 months or two or three years who:

(a) Procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote.

(b) Aids or abets in the commission of any of the offenses mentioned in Section 18560.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18561, added by Stats.1961, c. 1672, relating to procedures for filing a declaration requesting a recount, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29431, enacted by Stats.1961, c. 23, p. 876, § 29431, amended by Stats.1976, c. 1139, § 47.

Former § 29641, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11701 (Stats.1939, c. 26, p. 316).

Pen.C. § 47, amended by Stats.1901, c. 158, p. 437, § 10; Stats.1905, c. 479, p. 640, § 5.

CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

Deceiving voter into voting different from his intention, see Elections Code § 18573.

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West's Ann.Cal.Elec.Code § 18561.1

**Effective: January 01, 2003**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18561.1. Rejected**

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Addition of a section of this number by Initiative Measure (Prop. 52, Art. 4, § 5), relating to conspiracy to commit fraud, was rejected at the Nov. 5, 2002 election.

West's Ann. Cal. Elec. Code § 18561.1, CA ELEC § 18561.1

Current through Ch. 910 of 2006 Reg.Sess. urgency legislation and all propositions appearing on the Nov. 7, 2006 ballot

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West's Ann.Cal.Elec.Code § 18562

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18562. Precinct board members; ballot violations; misdemeanor**

Every member of a precinct board is guilty of a misdemeanor who, prior to putting the ballot of a voter in the ballot box, commits any of the following:

- (a) Attempts to find out any name on the ballot.
- (b) Opens or suffers to be opened or examined the folded ballot of any voter which has been handed in.
- (c) Makes or places any mark or device on any folded ballot with a view to ascertaining the name of any person for whom the voter has voted.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18562, added by Stats.1961, c. 1672, relating to procedures for public recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 14431, enacted by Stats.1961, c. 23, p. 770, § 14431.

Former § 29643, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 5729 (Stats.1939, c. 26, p. 218).

Pen.C. § 49, amended by Stats.1901, c. 158, p. 437, § 11; Stats.1905, c. 479, p. 640, § 6.

## CROSS REFERENCES

Aiding or abetting offense, see Elections Code § 18569.

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West's Ann.Cal.Elec.Code § 18563

C

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 4. Corruption of Voting (Refs & Annos)

**→ § 18563. Precinct board members; disclosure of vote without consent; misdemeanor**

Every member of a precinct board is guilty of a misdemeanor who, without the consent of a voter, discloses the name of any candidate the board member has discovered in his capacity as a member of the board to have been voted for by the voter.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18563, added by Stats.1961, c. 1672, relating to deposits to cover the costs of a recount, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former §§ 14431, 14433, enacted by Stats.1961, c. 23, pp. 770, 771, §§ 14431, 14433.

Former § 29644, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 5729, 5731 (Stats.1939, c. 26, pp. 218, 219).

Pol.C. § 49, amended by Stats.1901, c. 158, p. 437, § 11; Stats.1905, c. 479, p. 640, § 6.

Pol.C. § 1215, added by Stats.1891, c. 130, p. 178, § 32, amended by Stats.1913, c. 641, p. 1172, § 1.

CROSS REFERENCES

Candidate, candidate for public office, defined for purposes of this Code, see Elections Code § 305.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Precinct board, defined for purposes of this Code, see Elections Code § 339.

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West's Ann.Cal.Elec.Code § 18564

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 4. Corruption of Voting (Refs & Annos)

**→§ 18564. Tampering with or damaging voting machines; interference with secrecy of voting; unauthorized making or possession of keys; willful substitution of forged source codes**

Any person is guilty of a felony, punishable by imprisonment in a state prison for two, three, or four years who, before or during an election:

(a) Tampers with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes.

(b) Interferes or attempts to interfere with the secrecy of voting or ballot tally software program source codes.

(c) Knowingly, and without authorization, makes or has in his or her possession a key to a voting machine that has been adopted and will be used in elections in this state.

(d) Willfully substitutes or attempts to substitute forged or counterfeit ballot tally software program source codes.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18564, added by Stats.1961, c. 1672, relating to results of recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 15280, enacted by Stats.1961, c. 23, p. 795, § 15280.

Former § 29645, added by Stats.1976, c. 1192, § 15, amended by Stats.1979, c. 532, § 1; Stats.1989, c. 235, § 2.

Elec.C.1939, § 6600 (Stats.1939, c. 26, p. 239); Stats.1923, c. 96, pp. 191, 192, §§ 21, 24.

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031392



West's Ann.Cal.Elec.Code § 18564.5

**C**

**Effective: January 01, 2005**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→ § 18564.5. Civil action for offenses**

(a) The Secretary of State, Attorney General, and any local elections official in the county in which the act occurs, may bring a civil action against an individual, business, or other legal entity that commits any of the following acts before, during, or after an election:

(1) Tamper, interfere, or attempts to interfere with the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.

(2) Interferes or attempts to interfere with the secrecy of voting or interferes or attempts to interfere with ballot tally software program source codes.

(3) Knowingly, and without authorization, gains access to or provides another person or persons with access to a voting machine for the purpose of committing one of the acts specified by this section.

(4) Willfully substitutes or attempts to substitute forged, counterfeit, or malicious ballot tally software program source codes.

(5) Knowingly, and without authorization, inserts or causes the insertion of uncertified hardware, software, or firmware, for whatever purpose, into any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.

(6) Fails to notify the Secretary of State prior to any change in hardware, software, or firmware to a voting machine, voting device, voting system, or vote tabulating device, certified or conditionally certified for use in this state.

(b) A civil action may be brought pursuant to this section for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each act and for injunctive relief, if appropriate.

CREDIT(S)

(Added by Stats.2004, c. 813 (S.B.1376), § 3.)

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

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West's Ann.Cal.Elec.Code § 18565

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→§ 18565. Aiding and abetting offenses; penalty**

Any person who aids or abets in the commission of any of the offenses described in Section 18564 is punishable by imprisonment in the county jail for a period of six months or in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18565, added by Stats.1961, c. 1672, relating to termination of recounts, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29645.1, added by Stats.1989, c. 235, § 3.

CROSS REFERENCES

Aiding and abetting, generally, see Penal Code § 30 et seq.

County, City, defined for purposes of this Code, see Elections Code § 310.

LIBRARY REFERENCES

2003 Main Volume

Elections ↻309, 322.

Westlaw Topic No. 144.

C.J.S. Elections § 324, 336, 355(2).

RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18566

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

## → § 18566. Forging or counterfeiting election returns

Every person is punishable by imprisonment in the state prison for two, three, or four years who:

(a) Forges or counterfeits returns of an election purported to have been held at a precinct where no election was in fact held.

(b) Willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct where an election was actually held.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29100, enacted by Stats.1961, c. 23, p. 869, § 29100, amended by Stats.1976, c. 1139, § 26.

Former § 29646, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11550 (Stats.1939, c. 26, p. 310).

Pen.C. § 50, amended by Stats.1901, c. 158, p. 437, § 13; Stats.1905, c. 479, p. 641, § 8.

## CROSS REFERENCES

Forgery and counterfeiting, crime and punishment, generally, see Penal Code § 470 et seq.

Forgery, see Penal Code § 470 et seq.

## LIBRARY REFERENCES

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West's Ann.Cal.Elec.Code § 18567

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→ § 18567. Altering returns**

Every person who willfully adds to or subtracts from the votes actually cast at an election, in any official or unofficial returns, or who alters the returns, is punishable by imprisonment in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29101, enacted by Stats.1961, c. 23, p. 869, § 29101, amended by Stats.1976, c. 1139, § 27.

Former § 29647, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11551 (Stats.1939, c. 26, p. 311).

Pen.C. § 51, amended by Stats.1901, c. 158, p. 438, § 14; Stats.1905, c. 479, p. 641, § 9.

CROSS REFERENCES

Election, defined for purposes of this Code, see Elections Code § 318.

LIBRARY REFERENCES

2003 Main Volume

Elections ↻317, 332.

Westlaw Topic No. 144.

C.J.S. Elections § 216(1), 329, 353, 356.

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031396

West's Ann.Cal.Elec.Code § 18568

**C****Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18568. Offenses at the polls; penalties**

Every person is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the state prison for 16 months or two or three years, or by both the fine and imprisonment, who:

- (a) Aids in changing or destroying any poll list or official ballot.
- (b) Aids in wrongfully placing any ballots in the ballot container or in taking any therefrom.
- (c) Adds or attempts to add any ballots to those legally polled at any election by fraudulently putting them into the ballot container, either before or after the ballots therein have been counted.
- (d) Adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with intent to change the result of the election, or allows another to do so, when in his or her power to prevent it.
- (e) Carries away or destroys, attempts to carry away or destroy, or knowingly allows another to carry away or destroy, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns.
- (f) Removes any unvoted ballots from the polling place before the completion of the ballot count.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 14435, 29103, enacted by Stats.1961, c. 23, p. 771, §§ 14435, 29103, amended by Stats.1975, c. 1203, § 17.

Former § 29649, added by Stats.1976, c. 1192, § 15.

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031397

West's Ann.Cal.Elec.Code § 18569

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
    ▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)  
        ▣ Article 4. Corruption of Voting (Refs & Annos)

**→ § 18569. Aiding or abetting offenses**

Every person who aids or abets in the commission of any of the offenses mentioned in Section 18566, 18567, or 18568 is punishable by imprisonment in the county jail for the period of six months or in the state prison for 16 months or two or three years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29102, enacted by Stats.1961, c. 23, p. 870, § 29102, amended by Stats.1976, c. 1139, § 28.

Former § 29648, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11552 (Stats.1939, c. 26, p. 311).

Pen.C. § 52, amended by Code Am. 1873-74, c. 614, p. 423, § 4.

**CROSS REFERENCES**

Accessories to crimes, see Penal Code §§ 32, 33.

Aiding and abetting, generally, see Penal Code § 30 et seq.

County, City, defined for purposes of this Code, see Elections Code § 310.

**LIBRARY REFERENCES**

2003 Main Volume

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031398



West's Ann.Cal.Elec.Code § 18570

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 6. Corruption of the Voting Process (Refs & Annos)  
Article 4. Corruption of Voting (Refs & Annos)

**→ § 18570. Voting results; offenses; misdemeanor**

Every person is guilty of a misdemeanor who does any one of the following:

- (a) Removes or defaces any posted copy of the results of votes cast within the period of 48 hours from the official time fixed for the closing of the polls.
- (b) Delays delivery of or changes the copy of the result of votes cast that is to be delivered to the city or county elections official.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former §§ 17094, 22931, enacted by Stats.1961, c. 23, pp. 809, 851, §§ 17094, 22931.

Former § 29104, added by Stats.1975, c. 1203, § 18.

Former § 29650, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, §§ 7074, 9915 (Stats.1939, c. 26, pp. 289, 243, amended by Stats.1939, c. 587, p. 1992).

Pol.C. § 1261, amended by Code Am.1873-74, c. 610, p. 29, § 51; Stats.1899, c. 53, p. 63, § 1; Stats.1899, c. 67, p. 83, § 1; Stats.1901, c. 11, p. 5, § 1; Stats.1923, c. 382, p. 774, § 1; Stats.1929, c. 749, p. 1425, § 11; Stats.1931, c. 250, p. 431, § 4; Stats.1933, c. 155, p. 606, § 1.

Stats.1919, c. 477, p. 935, § 30.

**CROSS REFERENCES**

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031399

West's Ann.Cal.Elec.Code § 18571

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→§ 18571. Counting board members; failure to obey lawful orders**

Any person acting on any counting board who refuses to obey any lawful order of the county elections official or his or her deputy is guilty of a misdemeanor, unless he or she is by his or her refusal guilty of a higher crime under the laws of this state.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 17721, enacted by Stats.1961, c. 23, p. 815, § 17721.

Former § 29105, added by Stats.1975, c. 1203, § 19.

Former § 29651, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 7641 (Stats.1939, c. 26, p. 250).

Pol.C. § 1252, added by Stats.1921, c. 651, p. 1098, § 1.

**CROSS REFERENCES**

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

**LIBRARY REFERENCES**

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031400

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West's Ann.Cal.Elec.Code § 18572

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

Article 4. Corruption of Voting (Refs &amp; Annos)

**→ § 18572. Counting board members; liabilities and penalties**

Each counting board and its members are subject to the liabilities and penalties to which precinct boards or their members are subject where the votes and returns are counted at the precincts where they were polled.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 17722, enacted by Stats.1961, c. 23, p. 815, § 17722.

Former § 29106, added by Stats.1975, c. 1203, § 20.

Former § 29652, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 7642 (Stats.1939, c. 26, p. 250).

Pol.C. § 1252a, added by Stats.1921, c. 651, p. 1098, § 1.

CROSS REFERENCES

Precinct board, defined for purposes of this Code, see Elections Code § 339.

Precinct boards, composition and qualifications, generally, see Elections Code § 12300 et seq.

Precinct boards, violation of obligations, penal provisions, see Elections Code § 18700 et seq.

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West's Ann.Cal.Elec.Code § 18573

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 4. Corruption of Voting (Refs & Annos)

**→§ 18573. Deceiving voter unable to read; causing voter to vote for different person than intended through fraud; felony**

Every person is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years who furnishes any voter wishing to vote, who cannot read, with a ballot, informing or giving that voter to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29180, enacted by Stats.1961, c. 23, p. 872, § 29180.

Former § 29653, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11620 (Stats.1939, c. 26, p. 313).

Pen.C. § 53, amended by Stats.1893, c. 11, p. 7, § 1.

CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Felony defined, see Penal Code § 17.

Intimidation of voters, see Elections Code § 18540 et seq.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18574

C

Effective: [See Text Amendments]

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 6. Corruption of the Voting Process (Refs & Annos)

Article 4. Corruption of Voting (Refs & Annos)

**→§ 18574. Refusal of person required to be sworn or to answer questions; misdemeanor**

Every person who, after being required by the precinct board at an election, refuses to be sworn or, being sworn, refuses to answer any pertinent questions propounded by the board touching the right of another to vote, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29432, enacted by Stats.1961, c. 23, p. 876, § 29432.

Former § 29654, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11702 (Stats.1939, c. 26, p. 316).

Pen.C. § 43, amended by Code Am.1873-74, c. 614, p. 423, § 3.

CROSS REFERENCES

Election, defined for purposes of this Code, see Elections Code § 318.

Misdemeanor defined, see Penal Code § 17.

Precinct board, defined for purposes of this Code, see Elections Code § 339.

Precinct boards, composition and qualifications, generally, see Elections Code § 12300 et seq.

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West's Ann.Cal.Elec.Code § 18575

**C**

**Effective: [See Text Amendments]**

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→ § 18575. Unlawfully acting as election officers; acting in unauthorized capacity; felony**

Every person is guilty of a felony, and on conviction shall be punished by imprisonment in the state prison for two, three or four years, who at any election:

(a) Without first having been appointed and qualified, acts as an election officer.

(b) Not being an election officer, performs or discharges any of the duties of an election officer in regard to the handling, counting, or canvassing of any ballots.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29400, enacted by Stats.1961, c. 23, p. 876, § 29400.

Former § 29655, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11680 (Stats.1939, c. 26, p. 316).

Pen.C. § 40, added by Stats.1895, c. 79, p. 74, § 1.

**CROSS REFERENCES**

Ballot, defined for purposes of this Code, see Elections Code § 301.

Election, defined for purposes of this Code, see Elections Code § 318.

Felony defined, see Penal Code § 17.

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West's Ann.Cal.Elec.Code § 18576

C

Effective: [See Text Amendments]

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Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs &amp; Annos)

▣ Article 4. Corruption of Voting (Refs &amp; Annos)

**→§ 18576. Absent voter ballot; willful interference with delivery, retention beyond time limits or denial of right to return completed ballot; misdemeanor**

Any person who willfully (a) interferes with the prompt delivery of a completed absent voter ballot application, (b) retains a completed absent voter ballot application, without the voter's authorization, for more than three days excluding weekends and state holidays, or by the deadline for return of absent voters' ballot applications, whichever is earlier, or (c) denies an applicant the right to return his or her own completed absent voter ballot application to the local elections official having jurisdiction over the election, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29656, added by Stats.1987, c. 466, § 3.

## CROSS REFERENCES

Absentee voting, applications and voting procedures, generally, see Elections Code § 3000 et seq.

Absent voter, special absentee voter, defined for purposes of this Code, see Elections Code § 300.

Ballot, defined for purposes of this Code, see Elections Code § 301.

Computation of time, first and last days, holidays, see Civil Code § 10; Code of Civil Procedure § 12 et seq.; Government Code § 6800 et seq.

Computation of time, time for performance of any act provided for or required by this code, holiday as last day for performance of act, see Elections Code § 15.

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West's Ann.Cal.Elec.Code § 18577

C

Effective: January 01, 2002

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→§ 18577. Willful interference or cause of interference with return to local elections official by person in charge of completed absent voter ballot**

Any person having charge of a completed absent voter ballot who willfully interferes or causes interference with its return to the local elections official having jurisdiction over the election is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding ten thousand dollars (\$10,000), or by both.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2001, c. 922 (A.B.1520), § 6.)

#### HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Stats.2001, c. 922 (A.B.1520), added "punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding ten thousand dollars (\$10,000), or by both".

Legislative findings and declarations relating to Stats.2001, c. 922 (A.B.1520), see Historical and Statutory Notes under Elections Code § 100.5.

Governor Davis issued the following signing message regarding Stats.2001, c. 922 (A.B.1520):

"I am signing Assembly Bill 1520, which allows any voter to apply for permanent absentee voter status.

"This bill is a recognition that California's busy lifestyles should not be an impediment to their participation in the electoral process."

Sincerely,

GRAY DAVIS

**Derivation:** Former § 29657, added by Stats.1987, c. 466, § 4.

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West's Ann.Cal.Elec.Code § 18578

**C**

**Effective: [See Text Amendments]**

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 6. Corruption of the Voting Process (Refs & Annos)

▣ Article 4. Corruption of Voting (Refs & Annos)

**→ § 18578. Absent voter ballot; fraudulent signature**

Any person who applies for, or who votes or attempts to vote, an absent voter's ballot by fraudulently signing the name of a fictitious person, or of a regularly qualified voter, or of a person who is not qualified to vote, is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years, or by fine not exceeding one thousand dollars (\$1,000) or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 14721, added by Stats.1975, c. 1203, § 3.4, derived from former § 14691, Stats.1961, c. 23, p. 780, § 14691.

Former § 29658, added as § 29642 by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 8, renumbered § 29658 and amended by Stats.1987, c. 466, § 2.

Elec.C.1939, § 5951 (Stats.1939, c. 26, p. 225).

Pol.C. § 1363, added by Stats.1923, c. 283, p. 592, § 1.

CROSS REFERENCES

Absent voter, special absentee voter, defined for purposes of this Code, see Elections Code § 300.

Ballot, defined for purposes of this Code, see Elections Code § 301.

Felony, definition and penalties, see Penal Code §§ 17, 18.

Voter, defined for purposes of this Code, see Elections Code § 359.

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West's Ann.Cal.Elec.Code § 18600

**C**

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

▣ Article 1. Improper Signature-Gathering Tactics (Refs & Annos)

**→§ 18600. Misrepresentation or false statement concerning petitions**

Every person is guilty of a misdemeanor who:

(a) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, referendum or recall petition, intentionally misrepresents or intentionally makes any false statement concerning the contents, purport or effect of the petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature.

(b) Willfully and knowingly circulates, publishes, or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any state or local initiative, referendum, or recall petition for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.

(c) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any state or local initiative, intentionally makes any false statement in response to any inquiry by any voter as to whether he or she is a paid signature gatherer or a volunteer.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18600, added by Stats.1968, c. 79, p. 236, § 3, amended by Stats.1975, c. 1147, § 1, derived from former § 17073, added by Stats.1961, c. 23, p. 808, § 17073, relating to the counting of write-in votes, was repealed by Stats.1975, c. 1203, § 8. See Elections Code § 17100.

**Derivation:** Former §§ 29214, 29215, enacted by Stats.1961, c. 23, pp. 872, 873, §§ 29214, 29215, amended by Stats.1976, c. 1139, §§ 31, 32.

Former §§ 29286, 29287, added by Stats.1963, c. 1105, p. 2564, § 1.

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West's Ann.Cal.Elec.Code § 18601

**C**

**Effective: [See Text Amendments]**

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 1. Improper Signature-Gathering Tactics (Refs & Annos)

**→§ 18601. Refusal to show text of measure or petition; misdemeanor**

Any person working for the proponent or proponents of an initiative or referendum measure or recall petition who refuses to allow a prospective signer to read the measure or petition is guilty of a misdemeanor.

An arrest or conviction pursuant to this section shall not invalidate or otherwise affect the validity of any signature obtained by the person arrested or convicted.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18601 added by Stats.1968, c. 79, p. 236, § 3, requiring a declaration by write-in candidate, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29228, added by Stats.1973, c. 1196, p. 2532, § 2.

Former § 29254, added by Stats.1973, c. 525, § 1.

Former § 29721, added by Stats.1976, c. 1192, § 15.

**CROSS REFERENCES**

Initiative and referendum, generally, see Const. Art. 2, §§ 8 to 11; Const. Art. 4, § 1; Elections Code § 9000 et seq.

Initiative, referendum or recall petition, persons entitled to circulate, see Elections Code § 102.

Measure, defined for purposes of this Code, see Elections Code § 329.

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West's Ann.Cal.Elec.Code § 18602

▷

**Effective: [See Text Amendments]**

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

▣ Article 1. Improper Signature-Gathering Tactics (Refs & Annos)

**→ § 18602. Obscuring summary of initiative or referendum measure; misdemeanor**

Any person working for the proponent or proponents of a statewide initiative or referendum measure who covers or otherwise obscures the summary of the measure prepared by the Attorney General from the view of a prospective signer is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18602, added by Stats.1968, c. 79, p. 236, § 3, amended by Stats.1970, c. 559, p. 1134, § 1; Stats.1975, c. 1045, § 1, relating to the filing of declaration by write-in candidate, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29229, added by Stats.1973, c. 1196, p. 2532, § 3.

Former § 29722, added by Stats.1976, c. 1192, § 15.

**CROSS REFERENCES**

Attorney General, powers and duties, see Government Code § 12510 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

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West's Ann.Cal.Elec.Code § 18603

C

Effective: [See Text Amendments]

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Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

▣ Article 1. Improper Signature-Gathering Tactics (Refs &amp; Annos)

**→§ 18603. Payment for signatures; offense**

Every person who offers or gives money or other valuable consideration to another in exchange for his or her signature on a state, county, municipal, or district initiative, referendum, or recall petition is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1996, c. 714 (S.B.1853), § 26.)

## HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

The 1996 amendment inserted ", referendum, or recall".

Former § 18603, added by Stats.1968, c. 79, p. 236, § 3, amended by Stats.1974, c. 454, p. 1075, § 2; Stats.1975, c. 1045, § 2, stating the requirements for tabulation of write-in votes, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 29723, added by Stats.1987, c. 523, § 1.

## CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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West's Ann.Cal.Elec.Code § 18610

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

→§ 18610. Solicitation of circulators to affix or permit false or forged signatures; penalty

Every person who solicits any circulator to affix to any initiative, referendum, or recall petition any false or forged signature, or to cause or permit a false or forged signature to be affixed, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29253, enacted by Stats.1961, c. 23, p. 875, § 29253.

Former § 29730, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11663 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

Forgery, see Penal Code § 470.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Misdemeanor defined, see Penal Code § 17.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

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Officers and Public Employees k70.7.

Statutes ↵327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

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West's Ann.Cal.Elec.Code § 18611

**C**

**Effective: [See Text Amendments]**

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Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

**→§ 18611. Circulation with false, forged or fictitious names; penalties**

Every person is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who circulates or causes to be circulated any initiative, referendum, or recall petition, knowing it to contain false, forged, or fictitious names.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

**HISTORICAL AND STATUTORY NOTES**

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29217, enacted by Stats.1961, c. 23, p. 873, § 29217, amended by Stats.1976, c. 1139, § 34.

Former § 29731, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11645 (Stats.1939, c. 26, p. 315 amended by Stats.1957, c. 139, p. 738, § 12).

Pen.C. § 64b, subd. 4, added by Stats.1915, c. 49, p. 55, § 1.

**CROSS REFERENCES**

County, City, defined for purposes of this Code, see Elections Code § 310.

Forgery defined, see Penal Code § 470.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

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West's Ann.Cal.Elec.Code § 18612

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Division 18. Penal Provisions (Refs & Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

▣ Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

➔ § 18612. Signing more than once or while disqualified; penalty

Every person is guilty of a misdemeanor who knowingly signs his or her own name more than once to any initiative, referendum, or recall petition, or signs his or her name to that petition knowing himself or herself at the time of signing not to be qualified to sign it.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29220, enacted by Stats.1961, c. 23, p. 873, § 29220, amended by Stats.1976, c. 1139, § 37.

Former § 29732, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11648 (Stats.1939, c. 26, p. 315, amended by Stats.1957, c. 139, p. 738, § 15).

Pen.C. § 64b, subs. 7, 8, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Initiative, referendum or recall petition, persons entitled to circulate, see Elections Code § 102.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Recall petition, generally, see Elections Code § 11040 et seq.

LIBRARY REFERENCES

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Statutes ↔327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

031414



West's Ann.Cal.Elec.Code § 18613

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

→§ 18613. Fictitious names or signing name of another; penalty

Every person who subscribes to any initiative, referendum, or recall petition a fictitious name, or who subscribes thereto the name of another, or who causes another to subscribe such a name to that petition, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29221, enacted by Stats.1961, c. 23, p. 874, § 29221, amended by Stats.1976, c. 1139, § 38.

Former § 29733, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11649 (Stats.1939, c. 26, p. 315, amended by Stats.1959, c. 96, p. 1950, § 2).

Pen.C. § 472a, added by Stats.1915, c. 43, p. 51, § 1.

CROSS REFERENCES

Felony, definition and penalties, see Penal Code §§ 17, 18.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

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Statutes ⇄327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 2. False or Ineligible Signatures on Petition (Refs & Annos)

➔ **§ 18614. Filing with false signatures; penalties**

Every person is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who files in the office of the elections official or other officer designated by law to receive the filing, any initiative, referendum, or recall petition to which is attached, appended or subscribed any signature which the person filing the petition knows to be false or fraudulent or not the genuine signature of the person whose name it purports to be.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29216, enacted by Stats.1961, c. 23, p. 873, § 29216, amended by Stats.1976, c. 1139, § 33.

Former § 29734, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11644 (Stats.1939, c. 26, p. 314, amended by Stats.1957, c. 139, p. 737, § 11).

Pen.C. § 64b, subd. 3, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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Westlaw Topic Nos. 283, 361.

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Article 3. Improper Payments to Prevent Petition Circulation and Filing (Refs & Annos)

**→§ 18620. Soliciting or obtaining money or thing of value for inducing proponents to abandon petitions**

Every person who seeks, solicits, bargains for, or obtains any money, thing of value, or advantage of or from any person, firm, or corporation for the purpose or represented purpose of fraudulently inducing, persuading, or seeking the proponent or proponents of any initiative or referendum measure or recall petition to (a) abandon the measure or petition, (b) fail, neglect, or refuse to file in the office of the elections official or other officer designated by law, within the time required by law, the initiative or referendum measure or recall petition after securing the number of signatures required to qualify the measure or petition, (c) stop the circulation of the initiative or referendum measure or recall petition, or (d) perform any act that will prevent or aid in preventing the initiative or referendum measure or recall petition from qualifying as an initiative or referendum measure, or the recall petition from resulting in a recall election, is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29222, enacted by Stats.1961, c. 23, p. 874, § 29222, amended by Stats.1976, c. 1139, § 39.

Former § 29740, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11650 (added by Stats.1941, c. 1279, p. 3225, § 1.9, amended by Stats.1957, c. 139, p. 738, § 16).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

031417

West's Annotated California Codes Currentness  
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Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 3. Improper Payments to Prevent Petition Circulation and Filing (Refs & Annos)

**→§ 18621. Receipt by proponent of consideration for abandoning petitions;  
penalties**

Any proponent of an initiative or referendum measure or recall petition who seeks, solicits, bargains for, or obtains any money or thing of value of or from any person, firm, or corporation for the purpose of abandoning the same or stopping the circulation of petitions concerning the same, or failing or neglecting or refusing to file the measure or petition in the office of the elections official or other officer designated by law within the time required by law after obtaining the number of signatures required under the law to qualify the measure or petition, or performing any act that will prevent or aid in preventing the initiative, referendum or recall proposed from qualifying as an initiative or referendum measure, or resulting in a recall election is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29223, enacted by Stats.1961, c. 23, p. 874, § 29223, amended by Stats.1976, c. 1139, § 40.

Former § 29741, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11651 (added by Stats.1941, c. 1279, p. 3226, § 2, amended by Stats.1957, c. 139, p. 739, § 17).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

031418

West's Ann.Cal.Elec.Code § 18622

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 3. Improper Payments to Prevent Petition Circulation and Filing (Refs & Annos)

→§ 18622. **Buying of petitions from circulators; misdemeanor**

Every person who offers to buy or does buy from a circulator any referendum, initiative, or recall petition on which one or more persons have affixed their signatures is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding one thousand dollars (\$1,000), or both. This section is not intended to prohibit compensation of a circulator, for his or her services, by a proponent of the petition or his or her agent.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29252, enacted by Stats.1961, c. 23, p. 875, § 29252.

Former § 29742, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11662 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Misdemeanor defined, see Penal Code § 17.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LIBRARY REFERENCES

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Statutes ⇄327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Elections § 319, Prevention of Circulation or Filing of Petition.

031419

West's Ann.Cal.Elec.Code § 18630

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 4. Threats and Theft to Prevent Petition Circulation and Filing

→§ 18630. Threat to commit assault or battery or to damage property;  
misdemeanor

Every person who threatens to commit an assault or battery on a person circulating a referendum, initiative, or recall petition or on a relative of a person circulating a referendum, initiative, or recall petition or to inflict damage on the property of the circulator or the relative, with the intent to dissuade the circulator from circulating the petition or in retribution for the circulation, is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29250, enacted by Stats.1961, c. 23, p. 875, § 29250.

Former § 29750, added by Stats.1976, c. 1192, § 15, amended by Stats.1977, c. 1112, § 9.

Elec.C.1939, § 11660 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

Assault and battery, see Penal Code § 240 et seq.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Misdemeanor defined, see Penal Code § 17.

Recall petition, generally, see Elections Code § 11040 et seq.

LIBRARY REFERENCES

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Statutes ↵327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Elections § 319, Prevention of Circulation or Filing of Petition.

031420

West's Ann.Cal.Elec.Code § 18631

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Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 4. Threats and Theft to Prevent Petition Circulation and Filing

➔ **§ 18631. Taking petitions from circulators by force or stealth; misdemeanor**

Every person who forcibly or by stealth takes from the possession of a circulator any initiative, referendum, or recall petition on which one or more persons have affixed their signatures is guilty of a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29251, enacted by Stats.1961, c. 23, p. 875, § 29251.

Former § 29751, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11661 (added by Stats.1959, c. 96, p. 1950, § 1).

CROSS REFERENCES

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Misdemeanor defined, see Penal Code § 17.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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Statutes ↵327, 367.

Westlaw Topic Nos. 283, 361.

C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Elections § 319, Prevention of Circulation or Filing of Petition.

CA Jur. 3d Initiative and Referendum § 92, Interference With Initiative or Referendum.

031421

West's Ann.Cal.Elec.Code § 18640

West's Annotated California Codes Currentness

Elections Code (Refs & Annos)

Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 5. Refusal of Circulators to Turn In Petitions

➔**§ 18640. Failure to surrender petitions to proponents; penalties**

Any person working for the proponent or proponents of an initiative or referendum measure or recall petition who solicits signatures to qualify the measure or petition and accepts any payment therefor and who fails to surrender the measure or petition to the proponents thereof for filing is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29226, enacted by Stats.1961, c. 23, p. 875, § 29226, amended by Stats.1976, c. 1139, § 43.

Former § 29760, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11654 (added by Stats.1941, c. 1279, p. 3227, § 5, amended by Stats.1957, c. 139, p. 740, § 20).

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Measure, defined for purposes of this Code, see Elections Code § 329.

Proponent or proponents of an initiative or referendum measure, defined for purposes of this Code, see Elections Code § 342.

Proponent or proponents of a recall petition, defined for purposes of this Code, see Elections Code § 343.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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Officers and Public Employees k70.7.

Statutes ¶327, 367.

Westlaw Topic Nos. 283, 361.

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West's Ann.Cal.Elec.Code § 18650

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 6. Misuse of Signatures on Petition (Refs & Annos)

→§ 18650. Use of signatures for other than qualification for ballot; misdemeanor

No one shall knowingly or willfully permit the list of signatures on an initiative, referendum, or recall petition to be used for any purpose other than qualification of the initiative or referendum measure or recall question for the ballot, except as provided in Section 6253.5 of the Government Code. Violation of this section is a misdemeanor.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29256, added by Stats.1974, c. 1410, p. 3106, § 9; Stats.1974, c. 1445, p. 3155, § 9.

Former § 29770, added by Stats.1976, c. 1192, § 15, amended by Stats.1984, c. 875, § 4.

CROSS REFERENCES

Ballot, defined for purposes of this Code, see Elections Code § 301.

Certification by proponent of initiative measure, use of signatures, see Elections Code §§ 9608, 9609 and 9610.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Inspection of public records, exemptions from disclosure, patient-physician confidential communication, petition signatures, see Government Code § 6276.34.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor, definition and penalties, see Penal Code §§ 17, 19.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

LAW REVIEW AND JOURNAL COMMENTARIES

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Statutes ⇐327, 367.

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West's Ann.Cal.Elec.Code § 18660

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⌘ Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

⌘ Article 7. False Affidavits Concerning Petitions

➔ **§ 18660. False affidavits; penalties**

Every person is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who makes any false affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29218, enacted by Stats.1961, c. 23, p. 873, § 29218, amended by Stats.1976, c. 1139, § 35.

Former § 29780, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11646 (Stats.1939, c. 26, p. 315, amended by Stats.1957, c. 139, p. 738, § 13).

Pen.C. § 64b, subd. 5, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

Affidavit defined, see Code of Civil Procedure § 2003.

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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C.J.S. Statutes § 140-142.

RESEARCH REFERENCES

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West's Ann.Cal.Elec.Code § 18661

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 7. False Affidavits Concerning Petitions

➔§ 18661. Public officers; false returns, certifications or affidavits

Every public official or employee is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment, who knowingly makes any false return, certification or affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29219, enacted by Stats.1961, c. 23, p. 873, § 29219, amended by Stats.1976, c. 1139, § 36.

Former § 29781, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11647 (Stats.1939, c. 26, p. 315, amended by Stats.1957, c. 139, p. 738, § 14).

Pen.C. § 64b, subd. 6, added by Stats.1915, c. 49, p. 55, § 1.

CROSS REFERENCES

County, City, defined for purposes of this Code, see Elections Code § 310.

Initiative and referendum petitions, state elections, general requirements, see Elections Code § 9000 et seq.

Initiative and referendum petitions, state elections, petition signatures, see Elections Code § 9020 et seq.

Recall petition, generally, see Elections Code § 11040 et seq.

Signature mark, defined for purposes of this Code, see Elections Code § 354.5.

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C.J.S. Statutes § 140-142.

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Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 8. Filing Petitions to Defeat an Initiative or Referendum (Refs & Annos)

→ § 18670. Misdemeanor

Every person is guilty of a misdemeanor who, either as principal or agent, files in the office of the Secretary of State, county elections official, or in the office of any other officer designated by law to receive the filing, a petition or any section of a petition relating to the Constitution or the laws of this state, authorized by the Constitution or laws of this state regulating the statewide initiative or referendum, with the intention of thereby defeating that initiative or referendum measure that is embraced in the petition. Nothing in this section applies to any person who, in good faith, files a petition embracing an initiative or referendum measure that conflicts with a similar measure already on file.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

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Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29212, enacted by Stats.1961, c. 23, p. 872, § 29212.

Former § 29790, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11640 (Stats.1939, c. 26, p. 313, amended by Stats.1939, c. 1095, p. 3026).

Pen.C. § 64a, added by Stats.1931, c. 662, p. 1402, § 1.

CROSS REFERENCES

Circulation of petition containing known false names or signatures, see Elections Code § 18610 et seq.

County, City, defined for purposes of this Code, see Elections Code § 310.

Elections official, defined for purposes of this Code, see Elections Code § 320.

Initiative and referendum, generally, see Const. Art. 2, §§ 8 to 11; Const. Art. 4, § 1; Elections Code § 9000 et seq.

Making false affidavits concerning petitions, see Elections Code § 18660.

Measure, defined for purposes of this Code, see Elections Code § 329.

Misdemeanor defined, see Penal Code § 17.

Proponent of initiative or referendum measure defined, see Elections Code § 342.

Secretary of State, powers and duties, administration and enforcement of Elections Code, see Const. Art. 5, § 11; Government Code § 12150 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

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031426

West's Ann.Cal.Elec.Code § 18671

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Division 18. Penal Provisions (Refs & Annos)

Chapter 7. Initiative, Referendum, and Recall (Refs & Annos)

Article 8. Filing Petitions to Defeat an Initiative or Referendum (Refs & Annos)

→§ 18671. Void petitions; filing with intent to defeat expression of public will

Any petition, or any section of a petition, filed by any person other than the proponents of an initiative or referendum measure and with an intention of defeating an expression of the public will is null and void.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29213, enacted by Stats.1961, c. 23, p. 872, § 29213.

Former § 29791, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 11641 (Stats.1939, c. 26, p. 314, amended by Stats.1939, c. 1095, p. 3026; Stats.1941, c. 1279, p. 3225, § 1.7).

Pen.C. § 64a, added by Stats.1931, c. 662, p. 1402, § 1.

CROSS REFERENCES

Initiative and referendum, generally, see Const. Art. 2, §§ 8 to 11; Const. Art. 4, § 1; Elections Code § 9000 et seq.

Making false affidavits concerning petitions, see Elections Code § 18660.

Measure, defined for purposes of this Code, see Elections Code § 329.

LIBRARY REFERENCES

2003 Main Volume

Statutes ⇐304, 344.

Westlaw Topic No. 361.

C.J.S. Statutes § 116, 125.

RESEARCH REFERENCES

Treatises and Practice Aids

2 Witkin Cal. Crim. L. 3d Crimes Against Gov't Auth. § 144, (S 144) Interference With Procedure.

West's Ann. Cal. Elec. Code § 18671, CA ELEC § 18671

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West's Ann.Cal.Elec.Code § 18680

▷

**Effective: [See Text Amendments]**

West's Annotated California Codes Currentness

Elections Code (Refs &amp; Annos)

Division 18. Penal Provisions (Refs &amp; Annos)

▣ Chapter 7. Initiative, Referendum, and Recall (Refs &amp; Annos)

▣ Article 9. Misuse of Campaign Funds (Refs &amp; Annos)

**→ § 18680. Misappropriation; expenses within due and lawful execution of the trust; penalties**

Every person who is entrusted with money or things of value for the purpose of promoting or defeating any initiative, referendum, or recall petition or any measure that has qualified for the ballot is a trustee of the money or things of value. If a person wrongfully appropriates the money or things of value to any use or purpose not in the due and lawful execution of the trust, the person shall be punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. The following expenses are within the due and lawful execution of the trust:

- (a) Securing signatures to initiative, referendum, or recall petitions.
- (b) Circulating initiative, referendum, or recall petitions.
- (c) Holding and conducting public meetings.
- (d) Printing and circulating prior to an election:
  - (1) Specimen ballots.
  - (2) Handbills.
  - (3) Cards.
  - (4) Other papers.
- (e) Advertising.
- (f) Postage.
- (g) Expressage.
- (h) Telegraphing.
- (i) Telephoning.
- (j) All salaries and expenses of:

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West's Ann.Cal.Elec.Code § 18680

- (1) Campaign managers.
- (2) Lecturers.
- (3) Solicitors.
- (4) Agents.
- (5) All persons employed in transacting business at headquarters or branch offices, if the business transacted is related to promoting or defeating an initiative, referendum, or recall petition or any measure which has qualified for the ballot.
- (k) Maintaining headquarters and branch offices.
- (l) Renting of rooms for the transaction of the business of an association.
- (m) Attorney's fees and other costs in connection with litigation where the litigation arises directly out of any of the following:
  - (1) Activities related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.
  - (2) The enactment, by the initiative process, of any ordinance, charter amendment, statute, or constitutional amendment.
  - (3) An election contest or recount.
  - (4) A violation of state or local campaign, disclosure, or election laws.

The amendment of this section by adding subdivision (m) thereto, made at the 1991-92 Regular Session of the Legislature, does not constitute a change in, but is declaratory of, the existing law.

Expenses for food, clothing, shelter and other personal needs of the trustee are not within the due and lawful execution of the trust. However, expenses for travel and necessary accommodations for the trustee are within the due and lawful execution of the trust, if the travel and accommodations are related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

**Derivation:** Former § 29227, enacted by Stats.1969, c. 106, p. 238, § 1, amended by Stats.1976, c. 1139, § 44.

Former § 29795, added by Stats.1976, c. 1192, § 15, amended by Stats.1991, c. 1002, § 1.

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West's Ann.Cal.Elec.Code § 18700

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness  
Elections Code (Refs & Annos)  
Division 18. Penal Provisions (Refs & Annos)  
Chapter 8. Obligations of Precinct Board (Refs & Annos)

→ § 18700. Failure to fulfill duties; misdemeanor

Any voter who has filed an application for the position of, and been appointed as a precinct board member and who, without being excused by the county elections official, knowingly fails to act as a precinct board member, is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).

CREDIT(S)

(Stats.1994, c. 920 (S.B.1547), § 2.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Legislative intent relating to Stats.1994, c. 920 (S.B.1547), § 2, see Historical and Statutory Notes under Elections Code § 1.

Former § 18700, enacted by Stats.1961, c. 23, § 18700, relating to the number of votes required to win election, was repealed by Stats.1975, c. 1203, § 8.

**Derivation:** Former § 1634, enacted by Stats.1961, c. 23, p. 619, § 1634.

Former § 29500, added by Stats.1975, c. 1203, § 22.

Former § 29800, added by Stats.1976, c. 1192, § 15.

Elec.C.1939, § 681 (Stats.1939, c. 26, p. 80).

Pol.C. § 1142, amended by Code Am.1873, to 74, c. 610, p. 21, § 38; Stats.1889, c. 274, p. 425, § 6; Stats.1895, c. 216, p. 298, § 1; Stats.1899, c. 70, p. 85, § 1; Stats.1903, c. 122, p. 133, § 1; Stats.1911, c. 440, p. 891, § 1; Stats.1911, Ex.Sess., c. 43, p. 186, § 1; Stats.1913, c. 634, p. 1165, § 1; Stats.1915, c. 522, p. 851, § 3; Stats.1919, c. 230, p. 333, § 2; Stats.1921, c. 549, p. 873, § 1; Stats.1929, c. 209, p. 368, § 1; Stats.1931, c. 1126, p. 2386, § 1; Stats.1937, c. 332, p. 721, § 1.

CROSS REFERENCES

Contests, grounds for election contests, see Elections Code § 16100.

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Ga. Code Ann., § 21-2-560

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**C**

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-560. False statements**

Except as otherwise provided in Code Section 21-2-565, any person who shall make a false statement under oath or affirmation regarding any material matter or thing relating to any subject being investigated, heard, determined, or acted upon by any public official, in accordance with this chapter, shall be guilty of a misdemeanor.

Laws 1894, p. 115, § 13; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Penal Code 1895, § 625; Penal Code 1910, § 660; Code 1933, § 34- 9901; Code 1933, § 34-1901.

**CROSS REFERENCES**

False swearing, see § 16-10-71.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↔318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

**RESEARCH REFERENCES**

**Treatises and Practice Aids**

Molnar Georgia Criminal Law - Crimes and Punishments § 30-1, In General.

Molnar Georgia Criminal Law - Crimes and Punishments § 30-1, In General.

Ga. Code Ann., § 21-2-560, GA ST § 21-2-560

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Ga. Code Ann., § 21-2-561

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West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs &amp; Annos)

▣ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

→ § 21-2-561. False registration

Any person who:

- (1) Registers as an elector knowing that such elector does not possess the qualifications required by law;
- (2) Registers as an elector under any other name than the elector's own name; or
- (3) Knowingly gives false information when registering as an elector

shall be guilty of a felony.

Laws 1894, p. 115, § 13; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1994, p. 1443, § 11; Laws 1998, p. 295, § 1.

Formerly Penal Code 1895, § 625; Penal Code 1910, § 660; Code 1933, § 34- 9901; Code 1933, § 34-1902.

## LIBRARY REFERENCES

Elections ↪312.

Westlaw Key Number Search: 144k312.

C.J.S. Elections § 326.

Ga. Code Ann., § 21-2-561, GA ST § 21-2-561

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Ga. Code Ann., § 21-2-562

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West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→§ 21-2-562. Insertion and alteration of entries in documents; removal; refusal to deliver**

(a) Any person who willfully:

(1) Inserts or permits to be inserted any fictitious name, false figure, false statement, or other fraudulent entry on or in any registration card, electors list, voter's certificate, affidavit, tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot or ballot card, or other record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election;

(2) Alters materially or intentionally destroys any entry which has been lawfully made therein; or

(3) Takes or removes any book, affidavit, return, account, ballot or ballot card, or other document or record from the custody of any person having lawful charge thereof, in order to prevent the same from being used or inspected or copied as required or permitted by this chapter

shall be guilty of a felony.

(b) Any person who willfully neglects or refuses, within the time and in the manner required by this chapter, to deliver any such document described in subsection (a) of this Code section into the custody of the officers who are required by this chapter to use or keep the same shall be guilty of a misdemeanor.

Laws 1958, p. 269, § 46; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1977, p. 313, § 2; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1905.

CROSS REFERENCES

Fraud, generally, see § 23-2-50 et seq.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

LIBRARY REFERENCES

Elections ↪317, 318.

Westlaw Key Number Searches: 144k317; 144k318.

C.J.S. Elections §§ 329, 331.

RESEARCH REFERENCES

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Ga. Code Ann., § 21-2-563

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-563. False signatures and statements in nomination petitions**

Any person who knowingly and willfully:

- (1) Signs any nomination petition without having the qualifications prescribed by this chapter;
- (2) Sets any false statement opposite the signature on a nomination petition;
- (3) Signs more nomination petitions than permitted by this chapter;
- (4) Makes a false statement in any affidavit required by this chapter to be appended to or to accompany a nomination petition;
- (5) Signs any name not his or her own to any nomination petition; or
- (6) Materially alters any nomination petition without the consent of the signers

shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, §§ 34-1908, 34-1909.

**LIBRARY REFERENCES**

Elections ↪ 317, 318.

Westlaw Key Number Searches: 144k317; 144k318.

C.J.S. Elections §§ 329, 331.

Ga. Code Ann., § 21-2-563, GA ST § 21-2-563

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Ga. Code Ann., § 21-2-564

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs &amp; Annos)

▣ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

→§ 21-2-564. **Nomination petitions; certificates and papers; destruction; fraudulent filing; suppression**

Any person who willfully makes any false nomination certificate or defaces or destroys any nomination petition, nomination certificate, or nomination paper, or letter of withdrawal, knowing the same, or any part thereof, to be made falsely, or suppresses any nomination petition, nomination certificate, or nomination paper, or any part thereof, which has been duly filed shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1910.

## LIBRARY REFERENCES

Elections ⇐317, 318.

Westlaw Key Number Searches: 144k317; 144k318.

C.J.S. Elections §§ 329, 331.

Ga. Code Ann., § 21-2-564, GA ST § 21-2-564

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Ga. Code Ann., § 21-2-565

**C**

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→§ 21-2-565. False statement in connection with notices of candidacy and qualifying for party nomination**

(a) Any person knowingly making any false statement in connection with filing a notice of candidacy under Code Section 21-2-132 or in connection with qualifying as a candidate for party nomination under Code Section 21-2-153 commits the offense of false swearing.

(b) The district attorney of any judicial circuit or of the county in which all or the greater portion of any municipality is situated shall furnish all investigative personnel and facilities to the Secretary of State, the superintendent, or political party, as the case may be, as needed to determine the accuracy and correctness of all facts set forth in the affidavits filed pursuant to Code Sections 21-2-132 and 21-2-153 and shall commence prosecution of any person when it appears that a violation of this Code section has occurred.

(c) Where proper venue of any such prosecution would be in another county, the district attorney whose office conducted the investigation shall forward all evidence and other data to the district attorney of the county where venue is proper; and prosecution shall be commenced by such official.

Laws 1974, p. 522, § 1; Laws 1976, p. 205, § 2; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1901.1.

CROSS REFERENCES

False swearing, see § 16-10-71.

LIBRARY REFERENCES

Elections ↪318.

Westlaw Key Number Search: 144k318.

C.J.S. Elections § 331.

RESEARCH REFERENCES

**Encyclopedias**

Ga. Jur. Criminal Law § 33:32, Generally.

NOTES OF DECISIONS

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Ga. Code Ann., § 21-2-566

**C**

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-566. Interference with primaries and elections**

Any person who:

- (1) Willfully prevents or attempts to prevent any poll officer from holding any primary or election under this chapter;
- (2) Uses or threatens violence to any poll officer or interrupts or improperly interferes with the execution of his or her duty;
- (3) Willfully blocks or attempts to block the avenue to the door of any polling place;
- (4) Uses or threatens violence to any elector to prevent him or her from voting;
- (5) Willfully prepares or presents to any poll officer a fraudulent voter's certificate not signed by the elector whose certificate it purports to be;
- (6) Knowingly deposits fraudulent ballots in the ballot box;
- (7) Knowingly registers fraudulent votes upon any voting machine; or
- (8) Willfully tampers with any electors list, voter's certificate, numbered list of voters, ballot box, voting machine, direct recording electronic (DRE) equipment, or tabulating machine

shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1985, p. 206, § 1; Laws 1998, p. 295, § 1; Laws 2003, Act 209, § 61, eff. July 1, 2003.

Formerly Code 1933, § 34-1924.

**HISTORICAL AND STATUTORY NOTES**

The 2003 amendment by Act 209, in par. (8), substituted "direct recording electronic (DRE) equipment" for "vote recorder".

**LIBRARY REFERENCES**

Elections ↪ 319.

Westlaw Key Number Search: 144k319.

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Ga. Code Ann., § 21-2-567

**C**

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-567. Intimidation of electors**

Any person who uses or threatens to use force and violence, or in any other manner intimidates any other person, to:

(1) Vote or refrain from voting at any primary or election, or to vote or refrain from voting for or against any particular candidate or question submitted to electors at such primary or election; or

(2) Place or refrain from placing his or her name upon a register of electors

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1934.

**CROSS REFERENCES**

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections 320.

Westlaw Key Number Search: 144k320.

C.J.S. Elections § 333.

Ga. Code Ann., § 21-2-567, GA ST § 21-2-567

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Ga. Code Ann., § 21-2-568

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West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-568. Giving unlawful assistance in voting**

Any person who:

- (1) Goes into the voting compartment or voting machine booth while another is voting or marks the ballot or ballot card or registers the vote for another, except in strict accordance with this chapter;
- (2) Interferes with any elector marking his or her ballot or ballot card or registering his or her vote;
- (3) Attempts to induce any elector before depositing his or her ballot or ballot card to show how he or she marks or has marked his or her ballot or ballot card;
- (4) While giving lawful assistance to another, attempts to influence the vote of the elector whom he or she is assisting or marks a ballot or ballot card or registers a vote in any other way than that requested by the voter whom he or she is assisting; or
- (5) Discloses to anyone how another elector voted, except when required to do so in any legal proceeding

shall be guilty of a misdemeanor.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1989, p. 1090, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1926.

**CROSS REFERENCES**

Conduct of voters, campaigners, and others at polling places generally, see § 21-2-413.

Punishment of misdemeanors when not otherwise provided for by statute, see § 17-10-3.

**LIBRARY REFERENCES**

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

**RESEARCH REFERENCES**

**Forms**

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Ga. Code Ann., § 21-2-569

West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs & Annos)

▣ Article 15. Miscellaneous Offenses (Refs & Annos)

**→ § 21-2-569. Interfering with poll officers**

Any person, including any poll officer, who willfully prevents any poll officer from performing the duties imposed on him or her by this chapter shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1906.

LIBRARY REFERENCES

Elections ↪319.

Westlaw Key Number Search: 144k319.

C.J.S. Elections § 330.

Ga. Code Ann., § 21-2-569, GA ST § 21-2-569

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Ga. Code Ann., § 21-2-570

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West's Code of Georgia Annotated Currentness

Title 21. Elections

☐ Chapter 2. Elections and Primaries Generally (Refs &amp; Annos)

☐ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

**→§ 21-2-570. Giving or receiving money or gifts for purpose of registering as voter, voting, or voting for particular candidate**

Any person who gives or receives, offers to give or receive, or participates in the giving or receiving of money or gifts for the purpose of registering as a voter, voting, or voting for a particular candidate in any primary or election shall be guilty of a felony.

Laws 1840, Cobb's 1851 Digest, p. 819; Laws 1880-81, p. 129, § 1; Laws 1904, p. 97, § 1; Laws 1905, p. 111, § 1; Laws 1906, p. 46, § 1; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1998, p. 295, § 1; Laws 1999, p. 52, § 18.

Formerly Code 1863, § 4443; Code 1868, § 4485; Code 1873, § 4569; Code 1882, § 4569; Penal Code 1895, § 629; Penal Code 1910, §§ 665, 675; Code 1933, §§ 34-9907, 34-9926; Code 1933, § 34-1933.

**CROSS REFERENCES**

Public officers and employees, selling office or dividing fees, see § 45-11-2.

**LIBRARY REFERENCES**

Elections ↪316.

Westlaw Key Number Search: 144k316.

C.J.S. Elections § 332.

**NOTES OF DECISIONS**

**Admissibility of evidence 3**

**Jury instructions 4**

**Sufficiency of indictment 2**

**Validity 1**

**1. Validity**

Statute proscribing buying or selling of votes was not void on its face for vagueness and overbreadth. Code, § 34-1933; U.S.C.A.Const. Amends. 1, 14. King v. State, 1979, 244 Ga. 536, 261 S.E.2d 333. Elections ↪ 311

**2. Sufficiency of indictment**

Acts 1905, p. 111, making it a misdemeanor to buy or sell, or offer to buy or sell, or in any way be concerned with buying or selling, a vote in a primary election, does not confine the offense to the buying of a registered vote; and hence an indictment thereunder was not defective because failing to allege that the person whose vote was bought

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Ga. Code Ann., § 21-2-571

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West's Code of Georgia Annotated Currentness

Title 21. Elections

▣ Chapter 2. Elections and Primaries Generally (Refs &amp; Annos)

▣ Article 15. Miscellaneous Offenses (Refs &amp; Annos)

**→ § 21-2-571. Unlawful voting**

Any person who votes or attempts to vote at any primary or election, knowing that such person does not possess all the qualifications of an elector at such primary or election, as required by law, or who votes or attempts to vote at any primary in violation of Code Section 21-2-223 or who knowingly gives false information to poll officers in an attempt to vote in any primary or election shall be guilty of a felony.

Laws 1964, Ex. Sess., p. 26, § 1; Laws 1994, p. 1443, § 12; Laws 1998, p. 295, § 1.

Formerly Code 1933, § 34-1929.

## LIBRARY REFERENCES

Elections ↪ 313, 318.

Westlaw Key Number Searches: 144k313; 144k318.

C.J.S. Elections §§ 325, 331.

Ga. Code Ann., § 21-2-571, GA ST § 21-2-571

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